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THE CRIMINAL JUSTICE CONSTRUCTION REFORM ACT

HEARINGS BEFORE THE SUBCOMMITTEE ON CRIMINAL LAW OF THE COMMITTEE ON THE JUDICIARY UNITED STATES SENATE NINETY-SEVENTH CONGRESS

FIRST SESSION

ON

S. 186

A BILL TO PROVIDE FINANCIAL ASSISTANCE TO THE STATES
TO UNDERTAKE COMPREHENSIVE CRIMINAL JUSTICE CON-
STRUCTION PROGRAMS TO IMPROVE THE CRIMINAL JUSTICE
SYSTEM OF THE STATES, TO PROVIDE THAT THE SECRETARY
OF THE TREASURY IS AUTHORIZED TO MAKE INTEREST
SUBSIDY PAYMENTS ON CRIMINAL JUSTICE FACILITY CON-
STRUCTION BONDS, AND FOR OTHER PURPOSES

MAY 18, JUNE 8, AND NOVEMBER 19, 1981

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THE CRIMINAL JUSTICE CONSTRUCTION REFORM ACT

MONDAY, MAY 18, 1981

U.S. SENATE,
SUBCOMMITTEE ON CRIMINAL LAW,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to call, at 10:05 a.m., in room 1318, Dirksen Senate Office Building, Senator Robert Dole (acting chairman of the subcommittee) presiding.

Present: Senator Grassley.

Staff present: Ralph Oman, staff director; Grace Rienhoff, chief clerk; Charles Borden, professional staff member, Criminal Law Subcommittee; Richard W. Velde and Yolanda Branche, counsels to Senator Dole; Lynda Nersesian, counsel to Senator Grassley; Miriam Mills, counsel to Senator Specter; John F. Nash, counsel to Senator Laxalt; Herman Schwartz, counsel to Senator Metzenbaum.

Senator DOLE. I apologize for being a little bit late. We have a number of committee hearings this morning. We are trying to cut the taxes in one committee, and do other things in other committees.

I have a statement which I will ask be made a part of the record along with a copy of my bill, S. 186.¹

OPENING STATEMENT OF SENATOR ROBERT DOLE

I would just say, in a preliminary way, that I introduced legislation on January 21, 1981, S. 186, which would establish a Federal program of assistance to State and local criminal justice agencies for planning and constructing police headquarters, courts, and other criminal justice facilities.

Today, we are going to have the first hearings on S. 186. We will receive testimony from criminal justice administrators, State criminal justice officials, and experts in the field of criminal justice on this proposal.

As the inmate population of the country continues to swell, it is important that the Congress focus on the problem that exists in our prisons. Generally American prisons are underfunded, understaffed, and filled far beyond capacity.

In some prisons, two or more inmates are housed in single-man cells, bunks are lined up side by side in the dormitories, and some prisoners sleep on the floor because of the crowded conditions. Stabbings and rapes occur with garish frequency. Guards are ill-

¹Text of S. 186 can be found on page 383.

paid. Medical treatment is inadequate. There are not enough prison jobs or classes, so most prisoners are idle for hours on end.

This kind of overcrowding aggravates the long-time problem of exconvicts committing new crimes. Dehumanizing, unsafe and unsanitary conditions can only serve to deter inmates from having any respect for the Criminal Justice System.

S. 186, obviously, is not going to correct all of these real problems, but it is designed to address the problems in a way. Additionally, the legislation is designed to improve rural courthouses, detention centers, halfway houses, reformatories, work farms, and community-based facilities, as well as police facilities.

I know that we are in a time of budget restraint, and we are not having any success, and probably we should not have any success, with some of the normal new spending programs that have come into the Congress, but I do believe that it is time we focus on this problem, particularly in light of what I perceive to be not a hard-line, but maybe a little tougher line being advocated by this administration as far as criminal justice is concerned. I would hope that these hearings will be helpful.

We can point up maybe weaknesses in S. 186 as well as its strengths, and see if we can reach some agreement in an effort to generate additional funding for construction and modernization of prison facilities, where the State and local agencies will be able to make bonds available. We have looked at some of the tax advantages these development bonds will present to investors, and we hope that this might be one avenue used to help modernization.

[Prepared statement of Senator Dole follows:]

STATEMENT OF SENATOR BOB DOLE
ON THE
CRIMINAL JUSTICE CONSTRUCTION REFORM ACT

ON JANUARY 21, 1981, I INTRODUCED LEGISLATION, S. 186, THAT WOULD ESTABLISH A FEDERAL PROGRAM OF ASSISTANCE TO STATE AND LOCAL CRIMINAL JUSTICE AGENCIES FOR PLANNING AND CONSTRUCTING POLICE HEADQUARTERS, COURTS, AND OTHER CRIMINAL JUSTICE FACILITIES. TODAY, THE SUBCOMMITTEE ON CRIMINAL LAWS BEGINS HEARINGS ON S. 186. WE WILL RECEIVE TESTIMONY FROM CRIMINAL JUSTICE ADMINISTRATORS, STATE CRIMINAL JUSTICE OFFICIALS, AND EXPERTS IN THE FIELD OF CRIMINAL JUSTICE ON THIS PROPOSAL.

AS THE INMATE POPULATION OF THIS COUNTRY CONTINUES TO SWELL, IT IS IMPORTANT THAT CONGRESS FOCUS ON THE PROBLEMS THAT EXIST IN OUR PRISONS. GENERALLY, AMERICAN PRISONS ARE UNDERFUNDED, UNDERSTAFFED, AND FILLED FAR BEYOND CAPACITY. IN SOME PRISONS TWO OR MORE INMATES ARE HOUSED IN SINGLE-MAN CELLS, BUNKS ARE LINED UP SIDE-BY-SIDE IN THE DORMITORIES AND SOME PRISONERS SLEEP ON THE FLOOR BECAUSE OF THE CROWDED CONDITIONS. STABBINGS AND RAPES OCCUR WITH GARISH FREQUENCY. GUARDS ARE ILL PAID. MEDICAL TREATMENT IS INADEQUATE. THERE ARE NOT ENOUGH PRISON JOBS OR CLASSES, SO MOST PRISONERS ARE IDLE FOR HOURS ON END.

THIS KIND OF OVERCROWDING AGGRAVATES THE LONG-TIME PROBLEM OF EX-CONVICTS COMMITTING NEW CRIMES. DEHUMANIZING, UNSAFE, UNSANITARY CONDITIONS CAN ONLY SERVE TO DETER INMATES FROM HAVING ANY RESPECT FOR THE JUSTICE SYSTEM.

S. 186 IS DESIGNED TO ADDRESS THE PROBLEMS THAT EXIST IN OUR NATION'S JAILS AND PRISONS. ADDITIONALLY, THIS LEGISLATION IS DESIGNED TO IMPROVE RURAL COURTHOUSES, DETENTION CENTERS, HALF-WAY HOUSES, REFORMATORIES, WORK-FARMS, AND COMMUNITY-BASED FACILITIES, AS WELL AS POLICE FACILITIES.

UNDER THIS BILL, TECHNICAL AND FINANCIAL ASSISTANCE WOULD BE PROVIDED TO THE STATE AND LOCAL GOVERNMENTS TO UNDERTAKE COMPREHENSIVE CRIMINAL JUSTICE CONSTRUCTION PROGRAMS TO IMPROVE THE CRIMINAL JUSTICE SYSTEM OF THE STATES.

UNDER S. 186 A CRIMINAL JUSTICE FACILITIES ADMINISTRATION WOULD BE ESTABLISHED WITHIN THE DEPARTMENT OF JUSTICE TO MAKE GRANTS TO THE STATE AND LOCAL GOVERNMENTS FOR THE CONSTRUCTION AND MODERNIZATION OF CRIMINAL JUSTICE FACILITIES. IN MAKING GRANTS TO A STATE, THE ADMINISTRATOR WILL TAKE INTO ACCOUNT THE POPULATION OF THE STATE AND THE VOLUME OF CRIMINAL JUSTICE ACTIVITY. TO INSURE THAT THIS AGENCY OPERATES SMOOTHLY, THE ADMINISTRATION WILL PREPARE AND SUBMIT AN ANNUAL REPORT TO THE PRESIDENT, FOR TRANSMITTAL TO CONGRESS ON THE ACTIVITIES AND PROGRAMS OF THE ADMINISTRATION.

A STATE WILL BE REQUIRED TO SUBMIT A STATE PLAN FOR A 7-YEAR PERIOD. THE PLAN

WILL SET FORTH A COMPREHENSIVE STATEWIDE PROGRAM FOR THE CONSTRUCTION AND MODERNIZATION OF CRIMINAL JUSTICE FACILITIES WITHIN THE STATE. THE STATE PLAN WILL INCLUDE INNOVATIONS AND ADVANCED TECHNIQUES IN THE DESIGN OF SUCH FACILITIES.

THIS LEGISLATION REQUIRES STATES TO SUBMIT PLANS TO MODERNIZE PRISON INDUSTRIES AND WORK RELEASE PROGRAMS. ADDITIONALLY, TO THE EXTENT THAT IT IS PERMISSIBLE UNDER STATE LAW, CONVICT LABOR COULD BE USED IN PROJECTS THAT ARE FUNDED BY S. 186.

MANY CRIMINAL JUSTICE FACILITIES HAVE HISTORIC SIGNIFICANCE ALTHOUGH SOME HAVE BEEN ALLOWED TO DETERIORATE AND ARE IN VARIOUS STATES OF DISREPAIR. SINCE THESE BUILDINGS ARE IMPORTANT LANDMARKS THAT ARE VITAL TO THE IDENTITY OF THE STATE AND OUR NATION'S SENSE OF HISTORY, S. 186 WILL ENCOURAGE STATE PLANS TO INCLUDE THE RENOVATION AND REMODELING OF THESE KINDS OF FACILITIES, PARTICULARLY COUNTRY COURTHOUSES.

S. 186 FURTHER PROVIDES THAT TO THE EXTENT PRACTICAL CRIMINAL JUSTICE FACILITIES BE DESIGNED SO THAT THEY COULD BE USED FOR OTHER CRIMINAL JUSTICE PURPOSES IF THEY ARE NO LONGER USED FOR THE SPECIFIC PURPOSE FOR WHICH THEY WERE BUILT. THE DUAL PURPOSE CONCEPT HAS PARTICULAR RELEVANCE IN THE DESIGN OF NEIGHBORHOOD JUSTICE CENTERS AND STATION HOUSES FOR LAW ENFORCEMENT PERSONNEL.

IT IS IMPORTANT TO NOTE THAT THE FEDERAL FUNDS THAT ARE MADE AVAILABLE UNDER THIS BILL ARE NOT DESIGNED TO SUPPLANT STATE OR LOCAL FUNDS, BUT ARE INTENDED TO BE USED TO INCREASE THE AMOUNTS OF FUNDS THAT GENERALLY ARE AVAILABLE FOR THE CONSTRUCTION AND RENOVATION OF CRIMINAL JUSTICE FACILITIES IN THE STATE.

WHENEVER MORE THAN \$500,000 IS SPENT ON THE CONSTRUCTION OR MODERNIZATION OF A CRIMINAL JUSTICE FACILITY UNDER CRIMINAL JUSTICE STATUTES THAT ARE PRESENTLY IN EXISTENCE, THE CONSTRUCTION SHALL BE CONSISTENT WITH THE STATE MASTER PLAN. IT IS MY BELIEF THAT THIS PROVISION WILL PREVENT GOVERNMENT WASTE BY REQUIRING A UNIFIED FEDERAL EFFORT IN A PARTICULAR STATE.

THE ADMINISTRATOR OF THE CRIMINAL JUSTICE FACILITIES SHALL HAVE THE AUTHORITY TO MAKE DEMONSTRATION GRANTS TO THE STATES. THE DEMONSTRATION GRANTS WOULD BE DESIGNED TO TEST THE APPLICABILITY OF ADVANCED PRACTICES TO THE DESIGN, CONSTRUCTION, AND MODERNIZATION OF CRIMINAL JUSTICE FACILITIES. THESE DEMONSTRATION GRANTS CAN ALSO BE USED TO TEST THE NEED FOR THE CONSTRUCTION AND MODERNIZATION OF CRIMINAL JUSTICE FACILITIES.

A CLEARING-HOUSE ON THE CONSTRUCTION AND MODERNIZATION OF CRIMINAL JUSTICE FACILITIES WILL BE ESTABLISHED UNDER THIS LEGISLATION. THE CLEARING-HOUSE WILL COLLECT INFORMATION PERTAINING TO THE CONSTRUCTION AND MODERNIZATION OF CRIMINAL JUSTICE FACILITIES TOGETHER WITH EXPLANATIONS OF HOW THE CONSTRUCTION PROGRAM

CAN BE USED TO IMPROVE THE ADMINISTRATION OF THE CRIMINAL JUSTICE SYSTEM WITHIN EACH STATE. THIS INFORMATION WOULD BE DISSEMINATED TO ARCHITECTS, PLANNERS, AND PUBLIC OFFICIALS INTERESTED IN CONSTRUCTION AND MODERNIZATION OF CRIMINAL JUSTICE FACILITIES.

IN AN EFFORT TO GENERATE ADDITIONAL FUNDS FOR THE CONSTRUCTION AND MODERNIZATION OF PRISON FACILITIES. STATE AND LOCAL AGENCIES WILL BE ABLE TO MAKE BONDS AVAILABLE. I HAVE STUDIED THE VARIOUS TAX ADVANTAGES THAT THESE DEVELOPMENT BONDS WILL PRESENT TO INVESTORS AND IT IS HOPED THAT THESE BONDS WILL RESULT IN INCREASED FUNDING FOR CONSTRUCTION AND MODERNIZATION PROJECTS.

I AM EAGER TO HEAR THE TESTIMONY THAT OUR OUTSTANDING WITNESSES WILL PRESENT.

OUR FIRST WITNESSES ARE MR. MARTIN HORN, ASSISTANT TO THE COMMISSIONER OF THE DEPARTMENT OF CORRECTIONAL SERVICES IN NEW YORK, MR. MARK CORRIGAN, 1ST DEPUTY COMMISSIONER OF THE NEW YORK CITY DEPARTMENT OF CORRECTIONS, AND STATE SENATOR LEON BOGUES, NEW YORK SENATE MINORITY TASK FORCE ON CRIMINAL JUSTICE.

Senator DOLE. Our first panel of witnesses consists of Martin Horn, assistant commissioner, Department of Correctional Services, New York; Mark Corrigan, first deputy commissioner to the New York City Department of Corrections; and State Senator Leon Bogues, New York Senate Minority Task Force on Criminal Justice.

We are pleased to have you three gentlemen. I would say, as you are coming forward, your entire statements will be made a part of the record. We have five panels and some 20 witnesses. Senator Grassley will be here soon, and we will probably be rotating the chairing of the committee.

Your entire statement will be made a part of the record, and it would be helpful to us if you could abbreviate and summarize your statement, it would be helpful to me and the staff.

You may proceed, Mr. Horn, according to the order called, unless there is some other order you have agreed upon.

**STATEMENT OF MARTIN HORN, ASSISTANT COMMISSIONER,
DEPARTMENT OF CORRECTIONAL SERVICES, NEW YORK**

Mr. HORN. Senator, in New York State, we have been living in the shadow of Attica for nearly 10 years. The magnitude of that tragedy continues to condition much of our thinking and policy-making. We are determined never to allow a similar situation to develop in our prisons. It is that very determination that has enabled us to stay "one step ahead of the wolf," as the New York Times recently described New York's response to the crisis of growing prison populations.

Since 1972, our inmate population has increased by 87 percent, from 12,400 in September 1972 to its present level of 23,200 on May 14, an increase of over 10,000 inmates in less than 10 years. In 1972, we had excess prison capacity. Prison population reached 20,046 on July 31, 1964, and declined from that point until 1972.

That period of declining inmate population provided us with an opportunity to close down cell blocks in prisons where the age of the facility or the sheer density of the inmate population warranted a reduction in population. Consequently, the inmate population at Attica was reduced to 1,700 from the 2,200-plus it had reached at the time of the riot there. While we were unable to achieve the 1,200 level recommended by the McKay Commission, the reduction we effectuated substantially improved the operating environment there.

At Ossining, opened in 1825, we were able to close down two old cell blocks totaling 1,000 cells.

PRISON CONSTRUCTION DOES NOT CAUSE INCREASED POPULATION

Lest the advocates of a prison construction moratorium sway you, we argue that New York proves that excess prison capacity can be held vacant where the need for it no longer exists. Prison construction and prison capacity do not lead to nor cause prison population growth. Rather, crime and the public response to it drive the need for prison space, which in New York State we develop only after we see the need for it coming down the pike.

When the inmate population began to rise in 1975, we began to reopen some but not all of that excess capacity. We commenced a program of system expansion, including the acquisition of sites suitable for conversion to medium or minimum security prisons, rehabilitation of existing facilities, and the construction of a new 1,080-bed maximum security facility. From 1975 to 1980 alone, we added almost 5,000 beds to our system at a cost of \$54.4 million. Of that number, only 1,080 are maximum security cells.

We have begun to run out of options. The State Senate is balking at reopening 600 maximum security cells at Ossining. The need to create new usable prison space is acutely real to us.

On June 5, 1980, Governor Carey proposed an expansion plan for the New York State Prison System. That plan anticipates an inmate population as high as 25,500 by April 1, 1986. Recent trends in the criminal justice system in New York, such as a 37-percent increase in indictment in New York City during the first quarter of 1981, and an increase of almost 2,000 in the number of defendants awaiting trial on felony charges in New York City alone, suggest that even that figure may be exceeded.

Our population projections are derived from an analysis of historic trends and relevant demographic variables. These projections have been remarkably accurate, to within less than 1-percent error in the last several years. We have every reason to believe that more people will be sentenced to imprisonment in New York, regardless of whether or not we build new prisons.

The question is not whether we will imprison these people, but how. The Governor's plan calls for the creation of a prison capacity of 25,600 by 1986. The cost of this program is today estimated to be over \$331 million. Our prisons today are operating in excess of their capacities. We are taking forthright and prudent action to relieve that problem as quickly as possible.

PRISON CONSTRUCTION A NATIONAL EMERGENCY

Time is running out. The wolf is at the door. We believe that the situation in New York State is symptomatic of a national emergency. Society cannot permit crime to go unpunished for want of prison space, and for now prison is the only sanction available for violent crime. A revolutionary breakthrough in the range of available criminal sanctions is not on the horizon.

The States do not have the resources to respond to this emergency alone. Prevention of future tragedies is an appropriate form of Federal assistance to local jurisdictions.

The recently issued Federal standards for prisons and jails sets forth the explicit requirements for correctional administration. We estimate that to bring 9,500 existing general confinement cells into compliance with those standards will cost over \$444 million.

Our three new facilities are being designed with 70 square foot cells. To increase cell size to meet the 80 square feet mandated by the Department of Justice will cost, we estimate, an additional \$1.8 million beyond the \$331 million already being sought. If the Federal Government is serious about a national policy governing the adequacy of prison conditions, it must help out.

S. 186 would provide a timely and appropriate form of Federal assistance to the States.

FEDERAL POLICIES EXACERBATE THE PROBLEM

There is a perception in New York that this problem of prison overcrowding is exacerbated by some Federal policies. If the Federal Government chooses to diminish its efforts to stem the flow of drugs from Southwest Asia, decrease funding for DEA and the Customs Service, isn't there a transfer of costs to the States as we experience a major increase in drug addiction and related crimes? Drug arrests are up 9.2 percent in New York, and they are up 28.8 percent in the suburban counties.

If the FBI stops responding to all bank robberies, those persons ultimately apprehended and convicted for the robberies wind up in State rather than Federal prisons. If the Immigration and Naturalization Service fails to act on the approximately 920-plus aliens confined for felonies in our State prisons, aren't we in New York subsidizing a Federal responsibility?

We think the case is strong for the type of support S. 186 would provide. In New York State the legislature is giving serious consideration to a bond issue which would use State bond funds to reduce the cost of loaning money to the counties for jail construction, an approach similar to S. 186. We already have a 5-year construction plan and an operational master plan for corrections, and support those requirements within the bill.

Our facilities under design are, we believe, models of creative pragmatic solutions arrived at after much cross fertilization between architects and operations professionals. They are state of the art without being pretentious.

We have in the last year alone employed inmates to do almost \$1 million worth of renovation work. A proposed amendment to the State's building construction procurement law would specifically

authorize by statute the use of inmates in "real work" environments reconstructing and rehabilitating our facilities.

We have asked to be considered for participating in the prison industries enhancement program authorized by Congress last year, and find the provisions of S. 186 on this issue generally consonant with our plans.

From January 1979 to January 1981, participation in our work release program increased by 82 percent, and we are planning continued prudent increases.

The real problem, however, is the pressing and growing need for maximum and medium security facilities which provide minimally sufficient living conditions to inmates. We are fast approaching the point where we will "hit bone," that is to say, we will run out of inmates of a sufficiently low order risk to place in work release, camps, and minimum security.

Over 50 percent of our 1980 commitments were for violent felony offenses. Close to 70 percent of our under custody population stands convicted of crimes of violence.

In New York we already divert large numbers of nonviolent offenders. I feel confident in saying that the level of inappropriate confinement in New York is low.

Crime, and especially violent crime, is a national problem. It requires national responses such as S. 186 would provide.

Thank you, Mr. Chairman.

[Press release of Governor Carey of New York was subsequently supplied for the record.]

STATE OF NEW YORK
EXECUTIVE CHAMBER
HUGH L. CAREY, GOVERNOR

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FOR RELEASE:
IMMEDIATE, THURSDAY
JUNE 5, 1980

GOVERNOR CAREY UNVEILS PRISON SYSTEM
EXPANSION PLAN, CALLS LEGISLATIVE ACTION URGENT

Governor Hugh L. Carey today announced a plan to expand the State's prison system capacity as an alternative to State acquisition of the New York City Correctional Facilities on Rikers Island.

The alternative capacity expansion plan, developed jointly by Thomas Coughlin, State Commissioner of Correctional Services and Dr. Howard Miller, Director of the Division of Budget, will increase prison capacity nearly 4,000 beds by 1984. The plan comprises these major components:

1. 2,360 additional prison beds will be created through rehabilitation and renovation of existing facilities at a cost of approximately \$47 million.
2. 1,536 additional beds will be provided through construction of three 512-bed maximum security facilities. Two of these will be constructed on the grounds of current correctional facilities, Wallkill Correctional Facility and Woodbourne Correctional Facility. Location of the third facility has not yet been determined, however, site selection will focus on property proximate to New York City and to existing correctional facilities. Cost of construction is estimated at \$149 million for the three new prisons.
3. To ensure that the existing 21,132 beds are securely maintained, facility renovations costing \$79 million over the next five years will be required.

"This plan, when fully implemented, will provide an adequate amount of space and the required security classification to meet the State's prison capacity needs," The Governor said.

Cost of expansion (\$47 million) for existing facilities, for new construction (\$149 million) and the costs of essential rehabilitation work (\$79 million) will bring the total Correctional Services capital construction program to \$275 million over the next five years.

"Current population pressures require adherence to a tight implementation schedule," the Governor said. "I am, therefore, proposing a bill for immediate legislative consideration which would authorize and fund plan preparation for the two facilities to be located at the Woodbourne and New York City sites."

Plan preparation costs for the two facilities are estimated at \$6.15 million.

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Attachments

The City and State signed a Memorandum of Understanding in June, 1979, setting forth the broad parameters of the transfer. These included the schedule of payments to the City, timetable for State acquisition of the Island, and in a separate letter from the Governor to the Mayor, the State's offer to assist the City in identifying facilities for the housing of city-sentenced inmates in the later phases of the process.

Negotiations on a specific lease agreement continued from that time until May, 1980 when the City decided not to proceed with the plan because of fiscal impediments not foreseen in the original conceptualization.

During this period, several other events were occurring simultaneously which serve both to enhance and to complicate the State's ability to develop alternative means of increasing its prison capacity.

Among the factors complicating the present situation are:

- Prison population has continued to increase, it now totals approximately 20,900 in facilities with a capacity for 21,132, all maximum security facilities are operating at or over 100 percent of capacity, and an additional 900 inmates eligible for State custody remain on Rikers Island;
- Two years of site selection planning, design, and construction time has been lost toward the development of new facilities;
- The Legislature passed and the Governor signed into law the Violent Felony Offender Law and the administration launched the Violent Felony Offender Trial and Warrant Enforcement Programs, consequently violent felons are being convicted in increasing numbers of more serious offenses and those convicted are receiving substantially longer prison terms than previously, together these factors have pushed prison population upward;
- In the absence of additional capacity or replacement space, existing correctional facilities have continued to deteriorate due to an inability to vacate them for purposes of substantial renovation or repair.

Factors tending to enhance the State's ability to respond to the population increase at this time include:

- Refinement of DOCS population projections suggest that inmate population may reach only 24,058 by March 31, 1986 rather than the 25,554 previously forecast, a reduction in need of almost 1,500 beds, however, further statutory changes such as a gun law as proposed earlier this year would cancel out this relief and raise the capacity needed above the 25,000 mark, again;
- Design has commenced on a new 512-bed maximum security prison at Wallkill, this design could serve as a prototype for any new facilities decided upon as a means of expanding capacity and substantially reduce construction lead time;
- The Department has identified all possibilities for expansion through renovation of its existing facilities, preliminary cost estimates for these have been made;
- A total of 2,360 additional beds can be made available in existing facilities, these include the complete rehabilitation of Ossining's "B" Block (596 cells)/
- 572 cells are ready at Downstate upon approval of staffing in the Supplemental Budget. Opening of these, along with the creation of 2,360 new beds in other facilities for a total of 2,932 reduces the need for space from sources outside the Department.

The Current Situation

The State Corrections system is presently operating at 98 percent of total system capacity of 21,132. However, whatever excess space exists is in minimum security specialized facilities which have historically proven difficult to fill. The larger, older, and potentially more volatile maximum security facilities are at or above safe operating capacity.

Approximately 900 State-ready inmates and parole violators remain on Rikers Island for lack of capacity in the State system to absorb them.

Prison population is expected to increase in the next few years at the following rate:

<u>FY Ending</u>	<u>High Range</u>	<u>Low Range</u>
3/31/81	22,891	21,962
3/31/82	23,868	22,618
3/31/83	24,355	23,146
3/31/84	24,827	23,606
3/31/85	25,265	23,912
3/31/86	25,554	24,058

Capacity Expansion Alternative to Rikers Island

Any approach to capacity expansion must proceed rapidly on several fronts.

The most viable alternative to the Rikers Island lease is comprised of the following components:

1. Expansion of Capacity Within Existing State Correctional Facilities

Increased utilization could be accomplished through a series of rehabilitation and renovation projects providing an additional 2,360 spaces between October, 1980 and April, 1984 at an approximate cost of \$47 million. About half of this additional capacity (940 spaces) would be created at Ossining which would have to be kept in service at least through the end of the decade.

An additional 572 spaces would be provided at Downstate upon resolution of structural defects and given adequate staffing.

This component would yield 2,932 additional spaces over a four year period.

However, besides the 572 beds at Downstate and the initial 344 beds at Ossining which could be available by October, 1980, the bulk of the new space (2,016) could not be made available in less than 18-24 months.

2. Construction of Three New 512-Bed Maximum Security Facilities

Design of the Wallkill II project has been authorized and completion of construction may be anticipated by April, 1984 at a cost of \$39.5 million.

Preliminary technical aspects, such as Environmental Assessment work, has been completed for the Woodbourne II site and design could proceed following closely upon the schedule for Wallkill II. The Woodbourne II project is projected to cost \$49.2 million and, except for site specific variations, would be designed identically to Wallkill II.

A third new facility of 512 beds, following the same prototype, should be authorized immediately. The site for this facility is as yet undetermined. However, site

selection should focus on property proximate to New York City and to existing correctional facilities.

Were authorization to commence design received now, this project could be completed in approximately the same time frame as Woodbourne II and at a cost of approximately \$60 million.

This approach would yield the following results if projections of prison population prove out:

Date	Projected Population		Capacity	Under Custody	Hi-Range Shortfall
	Hi	Low			
6/80	21,800		21,132	21,900	900
3/31/81	22,891	21,962	22,570	22,570	321
3/31/82	23,868	22,618	23,417	23,387	451
3/31/83	24,355	23,164	23,954	23,924	401
3/31/84	24,827	23,606	25,600	24,827	-773
3/31/85	25,265	23,912	25,600	25,265	-335
3/31/86	25,554	24,058	25,600	25,554	-46

3. Needed Renovation of Existing Facilities

To ensure that the existing 21,132 beds are securely maintained, facility renovations costing \$79 million over the next five years will be required.

Discussion

In the event the high range projection is not reached, the State's ability to accommodate increased prison population is improved.

Should statutory changes drive inmate population beyond current high-range projections, additional capacity beyond that recommended herein would be required.

If the high population projections prove accurate, this plan is one which leaves no "administrative elbow room" and forces the system to operate at full capacity, with little opportunity for preventive maintenance or separation of inmate populations over the next several years.

Additionally, this plan leaves no room for delay in design and construction.

Total cost of this plan is estimated to be \$275 million.

The program outlined above is simple, straightforward, and relies exclusively on State resources. When fully implemented, it will provide an adequate amount and type of space with respect to security classification to meet the needs of the Department. This plan avoids overbuilding. However, given construction lead times, the plan relies heavily in its early stages on increased utilization internal to the system -- primarily in lower security level facilities.

21,132 Capacity As of 4/1/80 (according to daily population sheet)

- + 48 Arthur Kill
- + 36 Otisville
- +172 Ossining (A Block/3)
- + 20 Woodbourne
- + 40 Fishkill (+48, -8)
- +572 Downstate
- 44 Elmira (lock job)

21,976 Capacity As of 10/1/80

- +118 Mt. McGregor (+38, +35, +45)
- +172 Ossining (A Block/4)
- +158 Fishkill (+110, +48)
- + 90 Camp Adirondack

- + 39 Mid-Orange (+10, +29)
- + 26 Camp Georgetown
- + 20 Camp Summit
- + 16 Camp Pharsalia
- + 8 Bayview
- + 6 Hudson
- + 3 Clinton Annex
- 62 Eastern (lock job)

22,570 Capacity As of 4/1/81

- + 82 Hudson
- +105 Mid-Orange
- + 62 Eastern (Lock job)

22,819 Capacity As of 10/1/81

- +596 Ossining (B Block)
- + 44 Elmira (lock job)
- 42 Cocksackie (lock job)

23,417 Capacity as of 4/1/82

- + 45 Bedford Hills (+30, +15)
- + 34 Edgecombe
- + 34 Fishkill
- +250 Mt. McGregor (+132 without EIS)
- + 74 Hudson

23,854 Capacity As of 10/1/82

- + 29 Bedford Hills
- + 111 Elmira (+55, +56)
- 40 Auburn (lock job)

23,954 Capacity As of 4/1/83

- +512 Wallkill II
- + 42 Cocksackie (lock job)

24,508 Capacity As of 10/1/83

- +512 Woodbourne II
- + 40 Auburn (lock job)
- + 28 Clinton
- +512 New Facility

25,600 Capacity As of 4/1/84

Senator DOLE. Mr. Horn, do you have an extra copy of your statement?

Mr. HORN. Yes, Senator.

Senator DOLE. Thank you.

Mr. Corrigan, I hope that we can do a little better on the summaries. If you could speed it up just a little bit, because we have a lot of witnesses and not much time.

STATEMENT OF MARK D. CORRIGAN, FIRST DEPUTY COMMISSIONER TO THE NEW YORK CITY DEPARTMENT OF CORRECTIONS

Mr. CORRIGAN. Thank you, Senator.

I appreciate the opportunity to testify on behalf of the city of New York and its Department of Corrections in support of the Criminal Justice Construction Reform Act. The hearings of your subcommittee and the act which you are considering provide a forum for the reconsideration of a segment of government and public policy which needs extensive analysis, reform, and support.

As first deputy commissioner of the Nation's largest local jail system, one which with 9,200 inmates far exceeds the population of most State prison departments, I wish to share with you some of the urgency and concern which we in New York City are experiencing as we work to improve the management and control of our jails.

Although the construction and capital development problems which we face are larger in scale, I believe they accurately mirror corrections concerns throughout the Nation.

NEED FOR FEDERAL ASSISTANCE

From the viewpoint of a correctional administrator, the question of Federal assistance for prison and jail capital projects should be assessed within the context of three factors:

One, public safety. Can existing correction institutions hold offenders securely and insure the safety of those who work and live therein?

Two, compliance with existing Federal mandates. Can jurisdictions attain compliance with existing Federal court orders and standards which have been promulgated since 1965 with little attention to the ability of the States and localities to finance the required change?

Three, population planning. How much prison and jail space is available to accommodate an increasing population surge, and how will States and localities manage the problem of overcrowding?

Permit me to comment on each factor. First, public safety. If one reviews the history of corrections design in America, it becomes apparent that very little change occurred between the early 19th and mid-20th century. As a result, many institutions either approach 100 years in age, or though newer, they represent a design which fits the philosophy and policy of another era.

Such prisons and jails must be entirely reexamined and in many cases closed or rebuilt. The oldest among this Nation's corrections facilities operate in disrepair and deterioration, and in some cases represent a serious threat to security and public safety.

They require extensive investment in terms of hardware and support systems to insure that individuals can simply be confined securely to insure the safety of those corrections staff whose risk is too frequently defined by the inadequacies of the buildings where they work, and for the health and well-being of those who are confined.

In New York City, under the leadership of Mayor Koch, two such jails existed at the outset of his administration, the Manhattan House of Detention, formerly known as "The Tombs," and housing almost 2,000 people prior to its closing; and the Rikers Island House of Detention for men, which was built in 1938 to house 1,850 persons.

Both jails, which have been the subject of extensive Federal litigation, must and will be replaced at a combined cost projected in excess of \$100 million. Under current plans, that total cost would be borne by the city of New York, thus limiting our ability to meet equally critical citywide capital priorities, and further delaying improvements which must be accomplished within the system over time.

Without immediate Federal assistance, those additionally required improvements will take longer, and therefore will cost more.

Senator DOLE. I am going to ask you to summarize your statement, please, in about 2 minutes.

Mr. CORRIGAN. Second, compliance with Federal mandates. During the late 1960's, corrections design began to change, resulting in the appearance of smaller jails, which while representing progress over the older prisons, failed to meet the mandates which were coming forth from the Federal courts and which were represented in the standards which emerged from the field.

A cursory review of Federal judicial decisions from *Holt v. Sovereign* in Arkansas to *Hall v. Donnell* in Louisiana to *Rehm v. Malcolm* in New York City, demonstrates beyond any doubt that compliance with the mandates requires major capital investment.

In terms of population planning, the third factor I wish to discuss relates to the question of population planning in prison and jail expansion. What will be the extent of the current population surge and how much, if any, additional space should be constructed?

I urge you to recognize that those who would cast this Criminal Justice Construction Reform Act within the context of this issue alone, seriously fail to understand the urgent and compelling need for Federal capital assistance in order to address the two issues which I have described—safety and compliance with standards.

Therefore, population planning needs should not be the deciding factor. Regardless of whether we need more or less prison space, we need assistance now to rebuild and improve our existing systems.

In New York City, those beliefs have led to the adoption of a comprehensive population management plan which includes limited construction, but also encompasses strategy to insure that those who should not be confined in city jails are removed. Those efforts include expedited delivery of sentenced persons to the State system, maximization of community corrections and work release programs, and limited emergency bail review for certain low risk cases.

In addition to the construction of replacement facilities, which I have described here, we are pursuing the construction of temporary modular units which will within weeks yield 600 additional dormitory beds. We are exploring the concept of urban industrial camps and the conversion of existing underutilized public structures for jail space.

With 9,200 persons confined in a system designed for 8,700 inmates, we must continue to explore every possible option. New York City is managing not only the country's largest local jail system, but one of the 10 largest corrections department.

FEDERAL POLICIES EFFECTING LOCAL JAILS

It is important to note that as our population has surged by 2,500 in the past 2 years, the population of the Federal system, as Commissioner Horn noted, has dropped by 14 percent in 1980 alone. We, as New York City, are picking up a piece of that burden because of the fact that under current Department of Justice and FBI policy, the prosecution of certain offenses is being ceded to the local jurisdiction.

We urge immediate enactment of the Criminal Justice Construction Reform Act and believe that a careful analysis of local needs from the perspective of public safety, compliance with standards, and the management of increasing jail population, demonstrates that the infusion of Federal funds to that challenge is needed and warranted.

In closing, may I offer the testimony of a person who will not be represented today, I don't even know their name. Scrawled on the cell wall of a State prison not too far from here is the following inscription, which probably represents the most compelling testimony you will hear today, for when we get by the discussion of crime, and standards, and economics, and Federal and State relations, this writer reminds us of what is really at stake.

The writing on that cell wall reads:

To the builders of this nightmare. Though you may never get to read these words, I pity you for the cruelty of your minds to have designed this hell. If men's buildings are a reflection of what they are, this one portrays the ugliness of all humanity. If only you had some compassion.

Thank you, Senator.

[Prepared statement of Mr. Corrigan follows:]

PREPARED STATEMENT OF MARK D. CORRIGAN, FIRST DEPUTY COMMISSIONER
CITY OF NEW YORK

I APPRECIATE THE OPPORTUNITY TO TESTIFY ON BEHALF OF THE CITY OF NEW YORK AND ITS DEPARTMENT OF CORRECTION IN SUPPORT OF THE CRIMINAL JUSTICE CONSTRUCTION REFORM ACT (S186).

THE HEARINGS OF THE CRIMINAL LAW SUBCOMMITTEE AND THE ACT WHICH YOU ARE CONSIDERING PROVIDE A FORUM FOR THE RECONSIDERATION OF A SEGMENT OF GOVERNMENT AND PUBLIC POLICY WHICH NEEDS EXTENSIVE ANALYSIS, REFORM AND SUPPORT.

AS FIRST DEPUTY COMMISSIONER OF THE NATION'S LARGEST LOCAL JAIL SYSTEM, ONE WHICH, WITH 9,200 INMATES, FAR EXCEEDS THE POPULATION OF MOST STATE PRISON DEPARTMENTS, I WISH TO SHARE WITH YOU SOME OF THE URGENCY AND CONCERN WHICH WE IN NEW YORK CITY ARE EXPERIENCING AS WE WORK TO IMPROVE THE MANAGEMENT AND CONTROL OF OUR JAILS. ALTHOUGH THE CONSTRUCTION AND CAPITAL DEVELOPMENT PROBLEMS WHICH WE FACE ARE LARGER IN SCALE, I BELIEVE THEY ACCURATELY MIRROR CORRECTIONS CONCERNS THROUGHOUT THE NATION.

FROM THE VIEWPOINT OF A CORRECTIONAL ADMINISTRATOR, THE QUESTION OF FEDERAL ASSISTANCE FOR PRISON AND JAIL CAPITAL PROJECTS SHOULD BE ASSESSED WITHIN THE CONTEXT OF THREE FACTORS:

- I: PUBLIC SAFETY. IS THE BASIC SECURITY OF THIS NATION'S PRISONS AND JAILS ADEQUATE AND SUFFICIENT TO ACCOMMODATE A POLICY WHICH REFLECTS A GROWING INTOLERANCE FOR CRIME? CAN EXISTING CORRECTIONS INSTITUTIONS HOLD OFFENDERS SECURELY AND ENSURE THE BASIC SAFETY OF THOSE WHO WORK AND LIVE THEREIN?
- II: COMPLIANCE WITH FEDERAL MANDATES. CAN JURISDICTIONS ATTAIN COMPLIANCE WITH EXISTING FEDERAL COURT ORDERS AND STANDARDS WHICH HAVE BEEN PROMULGATED SINCE 1965 WITH LITTLE ATTENTION TO THE ABILITY OF STATES AND LOCALITIES TO FINANCE THE REQUIRED CHANGE.
- III: POPULATION PLANNING. HOW MUCH PRISON AND JAIL

SPACE IS AVAILABLE TO ACCOMMODATE AN INCREASING POPULATION SURGE AND HOW WILL STATES AND LOCALITIES MANAGE THE PROBLEM OF OVERCROWDING?

DURING THE PAST FOUR YEARS THE CITY OF NEW YORK, UNDER THE LEADERSHIP OF MAYOR EDWARD I. KOCH HAS BEGUN TO ADDRESS EACH OF THESE FACTORS TO ENSURE THAT OUR CITY MAINTAINS A SAFE, ORDERLY JAIL SYSTEM WHICH IS IN COMPLIANCE WITH CONSTITUTIONAL STANDARDS AND INCLUDES SUFFICIENT SPACE TO HOUSE THOSE WHO MUST BE CONFINED. OUR ABILITY TO MEET THAT OBJECTIVE OVER THE LONG TERM CLEARLY HINGES ON ADDITIONAL SUPPORT. WE IN NEW YORK WHOLEHEARTEDLY ENDORSE ENACTMENT OF THE CRIMINAL JUSTICE CONSTRUCTION REFORM ACT.

PERMIT ME TO COMMENT ON EACH FACTOR.

PUBLIC SAFETY- IF ONE REVIEWS THE HISTORY OF CORRECTIONS' DESIGN IN AMERICA, IT BECOMES APPARENT THAT VERY LITTLE CHANGE OCCURRED BETWEEN THE EARLY 19TH AND THE MID-20TH CENTURY. AS A RESULT, MANY INSTITUTIONS EITHER APPROACH 100 YEARS IN AGE (SEVERAL, IN FACT, SURPASS THE CENTURY MARK) OR THOUGH NEWER, THEY REPRESENT A DESIGN WHICH FITS THE PHILOSOPHY AND POLICY OF ANOTHER ERA. SUCH PRISONS AND JAILS MUST BE ENTIRELY RE-EXAMINED AND IN MANY CASES CLOSED OR REBUILT. THE OLDEST AMONG THIS NATION'S CORRECTIONS FACILITIES OPERATE IN DISREPAIR AND DETERIORATION AND IN SOME CASES REPRESENT A SERIOUS THREAT TO SECURITY AND PUBLIC SAFETY. THEY REQUIRE EXTENSIVE INVESTMENT IN TERMS OF HARDWARE AND SUPPORT SYSTEMS TO ENSURE THAT INDIVIDUALS CAN BE CONFINED SECURELY; TO ENSURE THE SAFETY OF THOSE CORRECTION STAFF WHOSE RISK IS TOO FREQUENTLY DEFINED BY THE INADEQUACY OF THE BUILDINGS WHERE THEY WORK; AND FOR THE HEALTH AND WELL-BEING OF THOSE WHO ARE CONFINED.

IN NEW YORK CITY, TWO SUCH JAILS EXISTED AT THE OUTSET OF THE KOCH ADMINISTRATION: THE MANHATTAN HOUSE OF DETENTION, FORMERLY KNOWN AS THE TOMBS AND HOUSING ALMOST 2,000 PEOPLE PRIOR TO ITS CLOSING; AND THE RIKERS ISLAND HOUSE OF DETENTION FOR MEN WHICH WAS BUILT IN 1938 TO HOUSE 1,850 PERSONS.

BOTH JAILS WHICH HAVE BEEN THE SUBJECT OF EXTENSIVE LITIGATION IN THE FEDERAL COURT MUST AND WILL BE REPLACED AT A COMBINED COST PROJECTED IN EXCESS OF \$100 MILLION. UNDER CURRENT PLANS THAT TOTAL COST WOULD BE BORNE BY THE CITY, THUS LIMITING OUR ABILITY TO MEET EQUALLY CRITICAL CITY-WIDE CAPITAL PRIORITIES, AND FURTHER

DELAYING IMPROVEMENTS WHICH MUST BE ACCOMPLISHED WITHIN THE SYSTEM OVER TIME. WITHOUT IMMEDIATE FEDERAL ASSISTANCE THOSE ADDITIONALLY REQUIRED IMPROVEMENTS TAKE LONGER AND THEREFORE WILL COST MORE.

COMPLIANCE WITH FEDERAL MANDATES- DURING THE LATE 1960s CORRECTIONS DESIGN BEGAN TO CHANGE RESULTING IN THE APPEARANCE OF SOME SMALLER JAILS, WHICH WHILE REPRESENTING SIGNIFICANT ADVANCES OVER THE TRIPLE TIERED AUBURN STYLED FORTRESSES, CLEARLY PRE-DATED THE MAJOR INTERVENTION OF THE FEDERAL COURTS WHICH BEGAN WITH THE HISTORIC ARKANSAS CASE OF HOLT V. SARVER. THAT LANDMARK DECISION OPENED THE DOOR TO FEDERAL COURT INTERVENTION WHICH HAS EXPANDED TO THE POINT OF IMPACTING MOST MAJOR JURISDICTIONS AND REQUIRING A TOTAL REASSESSMENT OF NOT ONLY THE OPERATION OF EACH JAIL BUT MORE IMPORTANTLY THE CAPACITY OF THE EXISTING STRUCTURES TO ACCOMMODATE THE KIND AND DEGREE OF CHANGE WHICH FEDERAL MANDATES CONTINUE TO REQUIRE.

A CURSORY REVIEW OF FEDERAL JUDICIAL DECISIONS FROM HOLT V. SARVER IN ARKANSAS TO HOLLAND V. DONELON IN LOUISIANA, TO RHEM V. MALCOLM IN NEW YORK CITY DEMONSTRATES, BEYOND ANY DOUBT, THAT COMPLIANCE WITH THE MANDATES REQUIRES MAJOR CAPITAL INVESTMENT.

NOT ONLY MUST THE OLDEST FACILITIES BE SHUT DOWN AND REPLACED BUT THOSE FACILITIES WHICH ARE MUCH NEWER, BUT NEVERTHELESS DESIGNED PRIOR OR WITHOUT ATTENTION TO FEDERAL INTERVENTION, MUST NOW BE REEXAMINED AND IN MANY INSTANCES, RETROFITTED TO ACCOMMODATE MANDATED NEW OPERATING REQUIREMENTS. THOSE COURT MANDATES AND THE MINIMUM STANDARDS WHICH HAVE EVOLVED WITHIN THE FIELD DURING THE SAME PERIOD OF TIME AT ALL LEVELS OF GOVERNMENT INCLUDING THE FEDERAL DEPARTMENT OF JUSTICE, DESCRIBE IN PRECISE DETAIL THE REQUIREMENTS FOR OPERATING A CORRECTIONAL FACILITY.

WHEN A COURT ORDER OR A STANDARD REQUIRES THAT AN INMATE BE ALLOWED OUT OF A CELL FOR MOST OF THE DAY IN BUILDINGS WHICH WERE DESIGNED FOR LOCK-IN, THE ENTIRE STRUCTURE MUST BE RETHOUGHT.

WHEN STANDARDS INCREASE THE TIME AND LEVELS OF ACTIVITY FOR VISITING AND RECREATION, AND PROGRAMS, ADDITIONAL SPACE IS REQUIRED FOR FACILITIES WHOSE PRINCIPAL ACTIVITY, BY DESIGN, WAS CONFINEMENT.

WHEN SPECIALIZED MANDATES RELATING TO HEALTH AND NUTRITION AND ENERGY ARE PROMULGATED, PLANT AND EQUIPMENT DEFICIENCIES BECOME

APPARENT AND COMPLIANCE REQUIRES MAJOR CAPITAL RESOURCES.

IN NEW YORK CITY MORE THAN \$70 MILLION IN CITY FUNDS HAS BEEN SPENT IN THE PAST FOUR YEARS TO UPGRADE OUR JAILS, ALMOST EXCLUSIVELY IN RESPONSE TO FEDERAL ORDERS AND MANDATES WITH NO FEDERAL HELP FOR CONSTRUCTION. YOU MUST RECOGNIZE THAT OUR ABILITY TO SUSTAIN THAT LEVEL OF COMMITMENT IS LIMITED AND YET THE TASK OF STANDARD COMPLIANCE WHICH WE SUPPORT, HAS JUST BEGUN.

POPULATION PLANNING- THE THIRD FACTOR WHICH I WISH TO DISCUSS RELATES TO THE QUESTION OF POPULATION PLANNING AND PRISON AND JAIL EXPANSION. WHAT WILL BE THE EXTENT OF THE CURRENT POPULATION SURGE AND HOW MUCH, IF ANY ADDITIONAL SPACE SHOULD BE CONSTRUCTED?

I URGE YOU TO RECOGNIZE THAT THOSE WHO WOULD CAST THE CRIMINAL JUSTICE CONSTRUCTION REFORM ACT WITHIN THE CONTEXT OF THIS ISSUE ALONE SERIOUSLY FAIL TO UNDERSTAND THE URGENT AND COMPELLING NEED FOR FEDERAL CAPITAL ASSISTANCE IN ORDER TO ADDRESS THE TWO ISSUES WHICH I HAVE DESCRIBED: THE SAFETY OF OUR EXISTING JAILS; AND THE ABILITY OF STATES AND LOCALITIES TO ATTAIN COMPLIANCE WITH EXISTING FEDERAL MANDATES. THEREFORE POPULATION PLANNING NEEDS SHOULD NOT BE THE DECIDING FACTOR. REGARDLESS OF WHETHER WE NEED MORE OR LESS PRISON SPACE, WE NEED ASSISTANCE NOW TO REBUILD AND IMPROVE OUR EXISTING SYSTEMS.

WE AS PROFESSIONALS IN THE FIELD OF CORRECTIONS HAVE NOT BEEN EFFECTIVE IN OUR ABILITY TO PREDICT PRISON AND JAIL POPULATION.

DURING THE PAST TWO DECADES WE HAVE MISCALCULATED POINTS AND DEGREES OF INCREASE AND DECLINE. WITH THE RECENT PUBLICATION OF AMERICAN PRISONS AND JAILS BY THE NATIONAL INSTITUTE OF JUSTICE, WHICH I URGE THIS COMMITTEE TO ANALYZE THOROUGHLY, THE PROBLEM OF POPULATION PLANNING IS FRAMED FOR PUBLIC POLICY CONSIDERATION IN A MANNER WHICH HELPS TO EXPLAIN SOME OF THE ERRORS OF THE PAST.

THAT STUDY WHICH WAS COMMISSIONED BY CONGRESS MAKES CLEAR THAT OUR RELIANCE ON FACTORS WHICH ARE EXTERNAL TO THE CRIMINAL JUSTICE SYSTEM SUCH AS DEMOGRAPHIC, SOCIAL AND ECONOMIC PREDICTORS MUST BE BALANCED WITH AN UNDERSTANDING THAT THE KEY, OVERRIDING DETERMINANT OF PRISON AND JAIL POPULATION IS CRIMINAL JUSTICE POLICY. SINCE SUCH POLICY IS SUBJECT TO VERY SHORT TERM SHIFTING, ITS INFLUENCE HAS TRADITIONALLY NOT BEEN ACCURATELY ACCOUNTED IN LONG-TERM POPULATION PROJECTIONS.

TO THE EXTENT THAT DECISION MAKERS UNDERSTAND AND ACCEPT THAT CONCLUSION, THE SYSTEM CAN BEGIN TO MANAGE POPULATION MORE EFFECTIVELY.

THE SECTIONS OF S186 WHICH WOULD ESTABLISH PLANNING REQUIREMENTS INVOLVING THE ENTIRE CRIMINAL JUSTICE SYSTEM WITHIN STATES REPRESENT A POSITIVE STEP TOWARD ADDRESSING THE POPULATION PLANNING ISSUE.

A SECOND FINDING OF THE N.I.J. STUDY WARNS THAT TO THE EXTENT THAT THIS NATION BUILDS MORE PRISONS, IT FILLS THEM. THOSE WHO SIMPLY BELIEVE THAT IF WE ENGAGE IN A MASSIVE PRISON CONSTRUCTION EFFORT NOW, THE PROBLEM WILL BE RESOLVED, FAIL TO LEARN FROM THE RECENT HISTORY OF SEVERAL STATES WITH LARGE SCALE EXPANSION PROGRAMS WHERE NEW PRISONS ARE FILLED ON THE DAY THEY OPEN.

IN WORDS OF THE N.I.J. STUDY, "THE OPTION OF CONSTRUCTION ALONE IS PROBABLY UNAFFORDABLE AND MAY DO LITTLE TO ALLEVIATE OVERCROWDING".

IN NEW YORK CITY THOSE BELIEFS HAVE LED TO ADOPTION OF A COMPREHENSIVE POPULATION MANAGEMENT PLAN WHICH DOES INCLUDE A LIMITED CONSTRUCTION COMPONENT BUT ALSO ENCOMPASSES STRATEGIES TO ENSURE THAT THOSE WHO SHOULD NOT BE CONFINED IN CITY JAILS ARE REMOVED. THOSE EFFORTS INCLUDE EXPEDITING THE DELIVERY OF SENTENCED PERSONS TO THE STATE SYSTEM; MAXIMIZATION OF COMMUNITY CORRECTIONS AND WORK RELEASE PROGRAMS; AND LIMITED, EMERGENCY BAIL REVIEW FOR CERTAIN LOW RISK CASES. IN ADDITION TO THE CONSTRUCTION OF REPLACEMENT FACILITIES WHICH I DESCRIBED EARLIER, WE ARE PURSUING THE CONSTRUCTION OF TEMPORARY MODULAR UNITS WHICH WILL WITHIN WEEKS YIELD 600 ADDITIONAL DORMITORY BEDS. WE ARE EXPLORING THE CONCEPT OF URBAN INDUSTRIAL CAMPS AND THE CONVERSION OF EXISTING UNDERUTILIZED PUBLIC STRUCTURES FOR JAIL SPACE.

WITH 9,200 PERSONS CONFINED IN A SYSTEM DESIGNED FOR 8,700 INMATES WE MUST CONTINUE TO EXPLORE EVERY POSSIBLE OPTION. NEW YORK CITY IS MANAGING NOT ONLY THE COUNTRY'S LARGEST LOCAL JAIL SYSTEM BUT ONE OF THE TEN LARGEST CORRECTIONS DEPARTMENTS.

IT IS IMPORTANT TO NOTE THAT AS OUR POPULATION HAS SURGED BY MORE THAN 2,500 IN THE PAST TWO YEARS, THE POPULATION OF THE FEDERAL SYSTEM DROPPED BY 14% IN 1980 ALONE. THAT REDUCTION IN FEDERAL POPULATION IS DIRECTLY ATTRIBUTABLE TO A SHIFT IN JUSTICE

DEPARTMENT AND F.B.I. PRACTICE WHEREBY THE PROSECUTION OF CERTAIN OFFENSES IS CEDED TO THE LOCAL JURISDICTION THUS ENABLING A FEDERAL CONCENTRATION OF SUCH WHITE COLLAR CRIMES AS CONSPIRACY, CORRUPTION AND COMPUTER FRAUD. THUS, THE LOCALITIES, ESPECIALLY NEW YORK HAVE ASSUMED A FEDERAL ROLE WITHOUT ADDITIONAL RESOURCES.

EXISTENCE OF SUCH FEDERAL POLICY SHOULD ENHANCE THE JUSTIFICATION FOR THE DIRECTION OF FEDERAL RESOURCES TO THE CAPITAL NEEDS OF THE CRIMINAL JUSTICE SYSTEM.

IN SUMMARY, WE IN NEW YORK RECOGNIZE THAT, ALTHOUGH WE HAVE EXPERIENCED A TREMENDOUS POPULATION SURGE WHICH PROBABLY WILL CONTINUE AT A LESSER RATE FOR THE IMMEDIATE FUTURE, EXPANSION ALONE IS NOT THE ANSWER. HOWEVER, IN VIEW OF OUR OVERCROWDED CONDITION AND OUR NEED FOR FLEXIBILITY TO ACCOMMODATE SUDDEN SHIFTS IN POPULATION WE ARE COMMITTED TO NEW CONSTRUCTION. IT REPRESENTS THE KEY TO IMPROVING SAFETY, MEETING MANDATES AND PROVIDING SOME RELIEF FROM CROWDING.

IN COMMENTING ON THE ADMINISTRATIVE ORGANIZATION OF THE ACT, WE IN NEW YORK CITY WISH TO EXPRESS OUR HOPE THAT WHEN ENACTED, THE LEGISLATION WILL INCLUDE PROVISIONS TO ENSURE THAT NEW YORK CITY AND OTHER LOCALITIES OF COMPARABLE SIZE RECEIVE AN EQUITABLE PORTION OF THE STATE APPROPRIATION. THE LAW AND ADMINISTRATIVE REGULATIONS MUST GUARD AGAINST THE BUREAUCRATIC AND POLITICAL OBSTACLES WHICH, THROUGH AN INAPPROPRIATE DISTRIBUTION FORMULA, WOULD PREVENT NEW YORK AND OTHER MAJOR CITIES FROM RECEIVING A FAIR SHARE IN A TIMELY MANNER. WE URGE THAT FULL CONSIDERATION BE GIVEN TO TARGETTING SPECIFIC DOLLAR AMOUNTS TO THE NATION'S LARGE CITIES TO ENSURE THAT THE INTENT OF THE ACT IS ATTAINED.

WE URGE IMMEDIATE ENACTMENT OF THE CRIMINAL JUSTICE CONSTRUCTION REFORM ACT AND BELIEVE THAT A CAREFUL ANALYSIS OF LOCAL NEEDS FROM THE PERSPECTIVE OF PUBLIC SAFETY AND SECURITY; COMPLIANCE WITH EXISTING FEDERAL MANDATES; AND THE MANAGEMENT OF INCREASING JAIL AND PRISON POPULATION DEMONSTRATES THAT THE INFUSION OF FEDERAL FUNDS TO THAT CHALLENGE IS NEEDED AND WARRANTED.

IN CLOSING, MAY I OFFER THE TESTIMONY OF A PERSON WHO WON'T BE REPRESENTED TODAY. I DO NOT EVEN KNOW THEIR NAME.

SCRAWLED ON THE CELL WALL OF A STATE PRISON NOT TOO FAR FROM HERE IS THE FOLLOWING INSCRIPTION WHICH PROBABLY REPRESENTS THE MOST COMPELLING TESTIMONY YOU WILL HEAR TODAY. FOR WHEN WE GET BY THE DISCUSSION OF CRIME AND STANDARDS AND ECONOMICS AND FEDERAL-STATE RELATIONS, THIS WRITER REMINDS US WHAT IS REALLY AT STAKE. THE WRITING ON THE WALL READS:

"TO THE BUILDERS OF THIS NITEMARE, THOUGH YOU MAY NEVER GET TO READ THESE WORDS, I PITY YOU FOR THE CRUELTY OF YOUR MINDS HAVE DESIGNED THIS HELL, IF MEN'S BUILDINGS ARE A REFLECTION OF WHAT THEY ARE, THIS ONE PORTRAYS THE UGLINESS OF ALL HUMANITY. IF ONLY YOU HAD SOME COMPASSION."

THANK YOU.

(Revised 5/18/81)

Senator DOLE. Thank you, Mr. Corrigan.
Senator Bogues.

**STATEMENT OF SENATOR LEON BOGUES, NEW YORK STATE
SENATE MINORITY TASK FORCE ON CRIMINAL JUSTICE**

Senator BOGUES. As elected representatives, we are constantly reminded of the enormous responsibility that has been placed on us to address the problems of crime in our society. As individuals, we are shocked and deeply offended by the apparently uncontrollable increase in property crime, in street crime, particularly in crimes of violence.

Additionally, we have looked to our various prison systems to provide us with the means of solving the problem. But now we see within many of these systems conditions so deplorable that they have caused long smoldering tensions to explode into conflagrations of violence and destruction.

Throughout this time, the message from our constituencies has been loud, clear, and direct. We want to be safe from crime in our homes and in the streets. We all know that the ramifications of fulfilling that request are tremendously more complex than the simplicity of its statement would imply.

Furthermore, as responsible legislators, we must realize that in a constitutional democracy, the resources needed to address those complexities comprise a burden that is far too staggering for any one governmental level—local, State or Federal—to assume alone.

That is why the concept of providing Federal assistance for the States to be used in their efforts to upgrade and improve criminal

justice facilities, as presented in your bill, Senator Dole, should have the support of every State legislature in the Nation.

The funds that would be appropriated over the next 7 years as a result of your bill, may appear to many to be very large. Particularly at this time when the Federal Government is reexamining the entire spectrum of Federal/State relationships, the question of whether or not this is an appropriate role for the Federal Government to assume is bound to be raised.

I think that if you examine that question in some depth, you will see that there are many compelling reasons for the Federal Government to accept some of the responsibility and seize the policy initiative in this area.

Perhaps the most basic reason for the existence of any government is that it creates an ordered society which provides safety and security for each of its citizens. Each State has devised a criminal justice system which is designed to achieve that goal. However, the continuously increasing crime rate attests to the fact that these systems are not able to accomplish that goal.

The States must now grapple with a paradoxical situation in which their decaying criminal justice facilities and resources are forced to deal with escalating caseloads, which in turn causes more rapid breakdowns and deterioration of the system.

We must have help in order to be able to stop the immediate erosion of our criminal justice systems, and then to begin a process of rebuilding and improving it. Also, it must be noted that the Federal Government has, in many respects, already assumed a degree of authority in the operation of criminal justice systems throughout the country.

Court decisions at the Federal level as well as standards promulgated by the Justice Department have imposed restrictions and forced some much needed changes at every operational level of the criminal justice system, from police agencies to parole agencies.

An example of the effects of these rulings for New York State can be found in a decision rendered by a Federal court in the midseventies. In that decision, New York was ordered to close down a major component of its criminal justice system, the Manhattan House of Detention for Men or the Tombs as it earlier has been referred to, because it was found to be unfit for the housing of prisoners.

The impact of that ruling, which was made for good reason and with strong justification, was felt immediately throughout the entire system and is still being felt today. No single segment of a criminal justice system operates in vacuum and, therefore, alterations or changes at one level will ultimately cause newly placed stresses and readjustments at every other level.

Another example of this in New York State is the recent court ruling which declared that detainees in local correctional facilities must be afforded the opportunity to have contact visits with relatives and friends. Again, the reasoning and justification for this ruling are sound, but the practical result will be large expenditures by many correctional facilities throughout the State as they are required to undertake major reconstruction or renovations.

Although the efforts of these types of mandates and rulings appear to have been overwhelmingly positive from the philosophi-

cal perspective, they have often resulted in slower processing times and have increased burdens placed on each operational level.

Correspondingly, the expenditures that must be made by the States have also been increased in order to respond to these burdens. The Federal Government does have, and should accept, some responsibility for these increased expenditures.

Another manner in which the Federal Government demonstrated its interest in criminal justice activities throughout the Nation was through the creation of the Law Enforcement Assistance Administration. That effort made by the Congress was an extremely valuable one. Speaking as a person who has been involved in the criminal justice system for many, many years, I was unhappy to see LEAA dismantled after it received an undeservedly poor reputation.

Perhaps this legislation of yours, Senator, will help to restore some of the moneys which States and localities received through LEAA, while simultaneously responding to the apparent desire of the Congress to eliminate the experimental nature of many of those LEAA programs.

Senator DOLE. May I ask you to summarize your statement also?

Senator BOGUES. Certainly.

Senator DOLE. I might state the reason for that. We have about 11 witnesses from different Bureaus of Correction. What we would really like to have, for the record, is your full statement which will be made part of the record, and then any specific comments that might affect your jurisdiction would be very helpful to the committee, and then, of course, your general comments on the legislation.

Senator BOGUES. The New York State Legislature, of which I am a member, and other State legislatures have responded to the public demand for action. At the present time, as it has been stated, there are discussions underway between our legislature and the executive over a proposed \$475 million public safety bond issue. These moneys, which may only be authorized through public referendum, would be utilized to expand and renovate our prisons. They will not be sufficient to meet the other needs of our criminal justice system.

We are deeply concerned, Senator Dole, that your bill, which will only provide aid in a single category, principally construction, could have the effect of penalizing States such as New York who have been willing to accept their responsibility by earmarking our budget resources for the improvement of our facilities.

The costs included in administering justice are astronomical, and our need for assistance is acute, but that assistance must allow more than just the creation of new buildings. We need the flexibility to be able to hire new people, and initiate new programs geared toward addressing the fundamental problems we are facing.

In debating various avenues for addressing the growing crime rate in our society, Congress has an opportunity to adopt a comprehensive means to assist the States in their efforts to eliminate these problems. It will indeed be unfortunate if the esteemed Members of the Senate and the House choose to focus their efforts on a single aspect of the problem, the physical structures that house the components of the criminal justice system.

The problems which we are facing extend far beyond bricks and mortar which constitute the agencies, departments, courts, and prisons in the system. We do not deny that these types of improvements are long overdue, but we feel that it is necessary to point out that more needs to be accomplished.

I must reiterate that we, in the New York State Senate, support enthusiastically the concept of the Federal Government offering States so much needed assistance in the area of criminal justice. We strongly urge the members of our delegation to lend their support to the passage of such legislation.

But we are concerned that aid be given in a manner which affords us flexibility that we may be able not only to building, but also staff them with qualified people, and institute within them realistic viable programs, which may stop the rapid increase in crime. We also are concerned that the proposed legislation's formula for distributing funds may give more Federal money to States which have a high volume of activity within their criminal justice system but have devoted little of their own budget resources to deal with their problems. This in turn would penalize States like New York which have both a high volume of activity and have devoted the maximum amount of State budget resources it can to solving their criminal justice problems.

The hallmark of our society has always been its fair and impartial application of justice, and we have striven to maintain a system of justice which remains viable. We must be careful to assure that this same system does not become strangled by the magnitude of the problems that it presently faces.

Thank you.

[Prepared statement of New York State Senator Bogues follows:]

PREPARED STATEMENT OF SENATOR LEON BOGUES

As elected representatives we are constantly reminded of the enormous responsibility that has been placed on us to address the problem of crime in our society. As individuals we are shocked and deeply offended by the apparently uncontrollable increases in property crime, in street crime and particularly in crimes of violence. Traditionally, we have looked to our various prison systems to provide us with a means of solving the problem, but now we see within many of those systems, conditions so deplorable that they have caused long smoldering tensions to explode into conflagrations of violence and distraction.

Throughout this time, the message from our constituencies has been loud, clear and direct: "We want to be safe from crime in our homes and in the streets". However, we all know that the ramifications of fulfilling that request are tremendously more complex than the simplicity of its statement would imply. Furthermore, as responsible legislators we must realize that in a constitutional democracy the resources need to address whose complexities, comprises a burden that is far too staggering for any one governmental level; local, state or federal, to assume alone. That is why the concept of providing federal assistance for states to be used in their efforts to upgrade and improve their criminal justice facilities is presented in Senator Dole's bill, should have the support of every staff legislature in the nation.

The funds that would be appropriated over the next 7 years as a result of Senator Dole's bill may appear to many to be very large. And, particularly at this time when the federal government is re-examining the entire spectrum of federal/state relationships, the question of whether or not this is an appropriate role for the federal government to assume, is bound to be raised. I think that if you examine that question in some depth you will see that there are many compelling reasons for the federal government to accept some of the responsibility and seize the policy initiative in this area. Perhaps the most basic reason for the existence of any government is that it creates an ordered society which provides safety and security for each of its citizens. Each state has devised a criminal justice system which is designed to achieve that goal. However, the continuously increasing crime rate attests to the

fact that these systems are not able to accomplish that goal. The states must now grapple with a paradoxical situation in which their decaying criminal justice facilities and resources are forced to deal with escalating caseloads, which in turn causes more rapid breakdowns and deterioration of the systems. We must have help in order to be able to stop the immediate erosion of our criminal justice systems, and then to begin a process of rebuilding and improving them.

Also, it must be noted that the federal government has, in many respects, already assumed a degree of authority in the operation of criminal justice systems throughout the country. Court decisions at the federal level as well as standards promulgated by the Justice Department have imposed restrictions and forced some much needed changes at every operational level of the criminal justice system; from police agencies through parole services.

An example of the effects of these rulings for New York State can be found in a decision rendered by a Federal District Court in the mid-1970's. In that decision, New York was ordered to close down a major component of its criminal justice system, the Tombs Correctional Facility, because it was found to be unfit for the housing of prisoners. The impact of that ruling, which was made for good reason and with strong justification, was felt immediately throughout the entire system, and is still being felt today. No single segment of a criminal justice system operates in a vacuum, and therefore alterations or changes at one level will ultimately cause newly placed stresses and readjustments at every other level. Another example of this in New York State is a recent court ruling which declared that detainees in local correctional facilities must be afforded the opportunity to have contact visits with relatives and friends. Again, the reasoning and justification for this ruling are sound, but the practical result will be large expenditures by many correctional facilities throughout the state as they are required to undertake major reconstruction or renovations.

Though the effects of these types of mandates and rulings appear to have been overwhelmingly positive from the philosophical perspective, they have often resulted in slower processing times and have increased burdens placed on each operational level. Correspondingly the expenditures that must be made by the states have also been increased in order to respond to these burdens. The federal government does have, and should accept some responsibility for these increased expenditures.

Another manner in which the federal government demonstrated its interest in criminal justice activities throughout the nation was through the creation of the Law Enforcement Assistance Administration (LEAA). That effort made by the Congress was an extremely valuable one, and speaking as a person who has been involved in the criminal justice system for a number of years, I was unhappy to see LEAA dismantled after it received an undeservedly poor reputation. Perhaps this legislation by Senator Dole will help to restore some of the monies which states and localities received through LEAA, while simultaneously responding to the apparent desire of the congress to eliminate the experimental nature of many of those LEAA programs.

The task of improving the criminal justice system in this nation in order to provide a safe society will be an enormous one. There is near unanimous agreement that every aspect of the criminal justice system is totally inadequate to deal with the dimensions of the problem before us. Prison facilities are antiquated, overcrowded and in many places unfit for human habitation. Probation and Parole services, which should be operating as keystones of the criminal justice system, instead appear to be treated as after thoughts by criminal justice planners who assign to them inadequate resources and facilities to carry out their vital role. Facilities and services for dealing with juveniles in the system often provide no more than human warehousing to hold these youths over until they graduate to the adult system. Programs to provide treatment for drug abusers or persons in need of psychological care are forced to turn away people who are truly in need due to a lack of resources. And what is truly unconscionable is that this intolerable situation is not only continuing, but we are allowing it to become worse.

The New York State Legislature and other state legislatures across the nation have responded to the public demand for action by passing many major pieces of anti-crime legislation. The effects of this legislative activity has been, and will continue to be, an ever increasing amount of arrests, prosecutions, and incarcerations. In New York we have expended a great deal of money to provide progressive programming, such as diversion programs, alternatives to incarceration, and programs to settle disputes outside of the court system. But even with all of these types of programs our prison system is presently operating at over 99% of its capacity.

At the present time discussions are underway between our legislature and the Executive over a proposed 475 million dollar public safety bond issue. Those monies, which may only be authorized through public referendum, would be utilized to

expand and renovate our prisons, to provide new laboratory facilities for our state police and to upgrade and improve our county jail system. We are deeply concerned that Sen. Dole's bill which will only provide aid in a single category, construction, could have the effect of penalizing states such as New York who have been willing to accept their responsibility by earmarking much needed resources for the improvement of our facilities. The costs included in administering justice are astronomical, and our need for assistance is acute. But that assistance must allow for more than just the creation of new buildings. We need the flexibility to be able to hire new people and initiate new programs geared towards addressing the fundamental problems we are facing.

The financial resources that New York State devotes to the operation of its criminal justice system are enormous. In fiscal year 1981 those expenditures by all governmental levels in the state will total more than 1 billion dollars. Even with those huge expenditures it is doubtful that the administration of justice in our state will be noticeably improved. It is because of this that we support the concept of aid to states as presented in Senator Dole's bill, and also pieces of legislation introduced by Congressman Solarz and Congressman Hughes which would provide monies to develop various programmatic activities such as alternatives to incarceration and major offense bureaus.

However, the New York State Senate Minority Criminal Justice Task Force does have reservations about Senator Dole's limited approach and we feel that there are important issues which must be examined closely. In debating various avenues for addressing the growing crime rate in our society, Congress has an opportunity to adopt a comprehensive means to assist the states in their efforts to eliminate the problem. It will indeed be unfortunate if the esteemed members of the Senate and the House choose instead to focus their efforts on a single aspect of the problem; the physical structures that house the components of the criminal justice system. The problems which we are facing extend far beyond the bricks and mortar which constitute the agencies, departments, courts and prisons in the system. The building of newer and larger prisons will not decrease the incidence of crime, nor will the expansion and renovation of court room facilities alone lead to an improvement in the quality of judgement which is rendered within them. We do not deny that those types of long overdue improvements are needed, but we do feel that it is necessary to point out that much more needs to be accomplished.

When we discuss crime and the administration and purpose of the criminal justice system it is important to maintain perspective. We are talking about human beings—we are involving ourselves with individuals. We have to remember that we are not only dealing with violent criminals who we must isolate from society, we are also dealing with non-violent people who commit crimes for a myriad of reasons which cannot be resolved simply through the imprisonment of these individuals, and we are dealing with youths whose initial criminal activities will either cease because of our efforts or expand into full-time careers because of our failures, and we are also dealing with drug abusers and psychologically impaired people whose ability to control their own behavior is often non-existent and therefore our response should be made accordingly. There are also many other individuals of a very different nature who must be taken into account. Probation and parole officers, police and correctional officers, court personnel, youth advocates, counselors, and of course citizens all have a major stake in how we as government officials choose to address the present chaos of our criminal justice system. We will be performing a great disservice to them if the choice is to ignore the larger issues by simply responding to one aspect of the problem.

I must reiterate that the New York State Senate Minority Criminal Justice Task Force supports enthusiastically the concept of the Federal government offering states some much needed assistance in the area of criminal justice. We strongly urge the members of our Congressional delegation to also lend their support to the passage of legislation which would provide aid for our state's beleaguered criminal justice system. Our main concern is that the aid be given in a manner which affords us flexibility so that we may be able to not only build new buildings but also staff them with qualified people, and institute within them realistic, viable programs which may stop the rapid increase in crime. The hallmark of our society has always been its fair and impartial application of justice. We have strived to maintain a system of justice which remains blind—we must be careful to assure that this same system does not become strangled by the magnitude of the problems which it presently faces.

Senator DOLE. Thank you, Senator Bogues.

I have a series of questions for each of the State correction administrators. Just reviewing the questions, and having heard the testimony of the first three witnesses, you may have covered at least one of you each of the questions. In any event, we may submit the questions in writing, and ask for your response, if that is satisfactory.

Also I will announce at this time that the hearing record will remain open for a period of 2 weeks to get any questions that we may submit in writing, and give you time to return the questions with answers, and if there are any other statements that you would like to add, after hearing other witnesses today, or would like to amend your statement. Anyone in the audience who is not a witness who would like to submit a statement, the hearing record will remain open for a period of 2 weeks.

I appreciate very much your testimony. I am now going to turn the hearing over to Senator Grassley of Iowa. He has a special interest in the next panel; a friend of his from Iowa is on that panel.

Thank you very much.

I will just call the witnesses, Mr. Perry Johnson, director, Department of Corrections for Michigan; Mr. Hal Farrier, director, Division of Adult Corrections, Iowa; and Mr. George F. Denton, director, Department of Rehabilitation and Correction, Ohio.

Again, I would say to the panel, since we have about 12 more witnesses, if you could summarize your statements, they will be made a part of the record. As I view it, the primary interest is whether or not S. 186 has any merit, and if you don't think it has, please say so, I am going to be leaving anyway. We know it probably needs modifications. Tell us how it might apply to your State.

We may have some different problems in different parts of the country, but it is, I think, rather broad-based legislation. Perhaps, as Senator Bogues indicated, it may not do enough, but in this time of budget restraint, we are not certain what we can do.

Having said that, I will turn the hearing over to Senator Grassley.

Senator GRASSLEY. First of all, I want to thank the chairman for holding these hearings. I think you have really shown your commitment to the problems that face this subcommittee, with the introduction of your bill.

I understand you are chairing three subcommittees today; is that right?

Senator DOLE. That is right.

Senator GRASSLEY. You certainly do know how to earn your money.

I am pleased at this time to introduce, as the chairman already has, Hal Farrier, who is director of the Division of Adult Corrections in Iowa. I had the privilege of working with him when I was a member of the Iowa State Legislature and when I was the chairman of the Appropriations Committee of the Iowa Legislature, when he was, as he has been in adult corrections during that period of time.

He is an example of the professionals that Governor Ray has put in adult corrections in the State of Iowa, and I think we have a reputation throughout the country of approaching it on a profes-

sional basis. Hal, you are one example of that. I appreciate that very much.

I would like to have you proceed as you desire. We normally and will now submit your entire testimony for the record, and would appreciate it very much if you could summarize it for the reason that time is always short, and I am one subcommittee chairman who tends to let things go on too long, to the detriment of the overall cause, because I tend to be fair to the early ones, and unfair to the later ones. So I have got to institute a practice of being fair to everybody.

[Introductory statement of Senator Grassley follows:]

INTRODUCTION OF HAL FARRIER, DIRECTOR, DIVISION OF ADULT CORRECTIONS, IOWA

Thank you Mr. Chairman. First, I want to commend you for holding these hearings at this early date. I know that you are presiding over three hearings today so the very fact that you are here today shows the strength of your commitment to focus more attention on improving the criminal justice system of the States.

I am pleased to introduce Mr. Hal Farrier who is the director of the Division of Adult Corrections in Iowa. I had the privilege of dealing with Hal when I was in the Iowa State Legislature and Hal was presenting his budget plans for the Iowa Security Medical Facility at Oakdale. I understand that from Oakdale you went on to being superintendent at the Mount Pleasant Health Institute and now you are back in the corrections field.

Mr. Chairman, I want to commend you on your choice of witnesses. Far too often, I think that we are basing many of our conclusions about criminal justice on empirical studies rather than drawing on the experience of those who have first hand experience of prison conditions. The American public has lost patience and confidence in the overall criminal justice system of the United States. Although this bill addresses only one aspect of the total system, it is legislation that could very well touch on several of the other problems that we are currently wrestling with in Congress. As the inmate population in the United States continues to swell, we have no other choice than to seriously consider this legislation.

STATEMENT OF HAL FARRIER, DIRECTOR, DIVISION OF ADULT CORRECTIONS, IOWA

Mr. FARRIER. Thank you, Senator Grassley, and Chairman Dole.

I will make my comments brief. Iowa is a small State, and although the statistics I relate to may not sound as impressive as the larger States', the problem is very similar because the available resources are consistent with the problems we face.

On February 1, 1981, Iowa's corrections system was serving nearly 14,000 adults, 81 percent of those were served in community-based corrections and in parole services. Only 19 percent were in the institutions. In spite of this very active program, the prison populations continued to grow at about 11 percent per year. This growth rate ranks Iowa the 10th most rapidly growing prison population in the Nation.

In contrast to community-based corrections, the prisons in Iowa are overcrowded; they are in a poor state of repair, and they are deteriorating rapidly.

Iowa has the distinction of having the oldest maximum security institution west of the Mississippi River. The average building date in that institution is 1923, with the oldest cell house built in 1839. The Iowa State Reformatory, the largest institution in Iowa, has an average building date of 1911, and a cell house housing 320 inmates built in 1880.

The capital needs for the next 6 years in the State of Iowa are projected to be \$23.4 million, an average of \$4 million per year.

The inmate populations have grown steadily since 1974 at a 3- to 5-percent rate. In 1980, the prison population grew 11 percent. Our projections indicate that the prison populations in Iowa are going to grow about 14 percent per year through 1985, and that growth rate is likely to continue through 1990.

Governor Ray has responded quite well, to the prison population and the dilemmas we face in the State. Our department proposed to the Governor this year the building of two new prisons of 500 beds each at a cost of \$70 million. That was beyond the means of the State treasury. Governor Ray has recommended converting a mental health institute at Mount Pleasant to a corrections program as well as adding 200 beds to another correction facility. The legislature in Iowa is debating that today.

Based on the current trends, it is estimated that the department of corrections in Iowa will require 584 prison beds by 1985 to meet the continued growth and a court order to reduce the population of the maximum security prison.

As director of the Division of Adult Corrections for the State of Iowa, I certainly applaud the introduction of S. 186. There exists a myriad of problems in the State of Iowa, as I am sure in every State in the country.

It becomes increasingly difficult for corrections administrators to go to legislatures and to the Governor to get the resources we need, and the courts expect, to provide correctional services in the prisons. It is not a popular mission to request money for inmates, people who have committed crimes against society, when the State is struggling to provide for the poor, the elderly, and the needy children.

The State of Iowa simply does not have all the resources to appropriately respond to the dilemma we are facing today in corrections.

S. 186 RECOMMENDATIONS

My recommendations relate to S. 186. I am convinced that the clearinghouse should be used exclusively for dissemination of the latest material relating to construction and programs for corrections.

Previous clearinghouses have gotten involved in establishing standards, and this has resulted in another layer of bureaucracy. The American Corrections Association has very admirably addressed the issues of standards for buildings, for construction, and for programs. I would certainly hope that your committee would recognize these professional standards, and would not mandate that the clearinghouse become involved in that process.

Second, the funding match should be very closely scrutinized. Whatever proportion the committee or Congress decides, it should be one which will encourage the States to provide appropriate bed space, and the rate should not be such that may encourage over building of correctional institutions.

With that I end my comments. If you have questions, need additional information, or if I can be of service to you in any way, please feel free to contact me. Thank you for this opportunity.

[Prepared statement of Mr. Farrier follows:]

PREPARED STATEMENT OF HAL FARRIER, DIRECTOR OF ADULT CORRECTIONS
IOWA DEPARTMENT OF SOCIAL SERVICES

The State of Iowa has organized its human services within an umbrella agency entitled the Department of Social Services similar to twenty-four other states. The Division of Adult Corrections is one of seven Divisions within this Department. The division is headed by a Director and is supported by two Deputy Directors, one for Community Based Corrections and the other for institutions. Pre-institution services are delivered through locally controlled, state funded agencies divided between the eight judicial districts of the State. The four mandated services of Community Based Corrections include pre-trial release, probation supervision, residential supervision and pre-sentence investigations. Parole services are delivered state-wide, using a differential case-load approach. There are seven state institutions, ranging from the maximum security institution through minimum security institutions and including a fully accredited forensic psychiatric hospital. The State of Iowa also has a halfway house network to house the work release program residents and are located in the major urban centers of the State.

On February 1, 1981, the Division of Adult Corrections was providing supervision to 13,673 adults with 11,103 being supervised in the community by the Community Based District staff and parole services of 81% of the total adult population. The development of community resources to accomplish this task is a result of continued interest and support on the part of the Governor and General Assembly. The capacity to expand community supervision is greatly limited by current case loads. In at least one district, the case load is nearing 120 cases per worker. The work load in the judicial districts has grown at an annual rate of 20% this past year.

This community approach has had a positive impact, not only on the nearly 1 million dollars collected last year in restitution, but by moderating the growth of prison population at an 11% rate during 1980. Although continued support is needed for Community Based Corrections, the saturation point may have been realized. The impact this program will have on prison populations during the next biennium cannot realistically be expected to be dramatically increased.

The State of Iowa rightfully boasts of the progressive approach taken by the State's Community Based Corrections program. In contrast, Iowa's prisons are seriously overcrowded, in a poor state of repair and rapidly deteriorating. The Iowa State Penitentiary, located in Ft. Madison, Iowa, is the oldest institution of its kind west of the Mississippi River. The average date of construction of Iowa's two maximum security prisons are as follows:

- Iowa State Reformatory, Anamosa, Iowa--average 1911, with the oldest cellhouse consisting of 320 cells, was built in 1880.
- Iowa State Penitentiary, Ft. Madison, Iowa--average of 1923, with the oldest cellhouse of 300 cells, was built in 1839.

The State of Iowa is currently in the process of unitizing these two largest institutions. The on-going construction effort is to divide these cellhouses into smaller, more manageable units, thus reducing regimentation and facilitating personal counseling and control. The project is improving living conditions and is intended to increase the safety for both the residents and the correctional-officer staff.

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This series of improvements was envisioned as an alternative to new construction, however, this renovation has aggravated an already severe overcrowding problem. The project was originally scheduled to be completed in 1978 but disturbances and the inability to free cellhouses for reconstruction stemming from a population in excess of capacity have drawn out the schedule. Work will be completed in late 1982 pending the absence of further unscheduled delays.

The original project budget including a \$ 2,949,000 LEAA was \$ 5,416,000. The work is now estimated to cost over \$ 6.6 million.

The capital needs to maintain the existing facilities within the Division of Adult Corrections with no increase in capacity in any of the institutions is as follows:

	82	83	84	85	86	87
Anamosa	\$ 1,118,000	832,000	1,325,000	600,000	8,000,000	508,000
Ft. Madison	3,720,000	1,969,000	841,000	389,000	187,000	90,000
Mt. Pleasant	640,000	180,000	270,000	180,000	78,000	000
Newton	257,000	97,000	72,000	290,000	000	000
Oakdale	186,000	000	108,000	000	000	000
Rockwell City	399,000	74,000	62,000	24,000	120,000	150,000
Hope Hall	400,000	000	250,000	000	000	000
Total	\$ 6,720,000	3,152,000	2,938,000	1,483,000	8,385,000	748,000

The capital needs for the next six years is \$23,416,000 with an average capital needs expenditure of \$3,903,000 per year.

The prison population in Iowa has grown steadily since 1975. Although the growth from 1974 through 1979 was approximately 100 additional residents per year. In 1980 that growth rate increased by 232 residents and projections indicate the growth of prison populations in 1981 will surpass the 1980 rate. On May 14, 1981 the State of Iowa had a prison population of 2,592 residents living in institutions designed for 2,565. The April, 1981 issue of Corrections Magazine shows Iowa had the tenth largest per-centage growth of inmate population in the past year. Additionally, the most recent projection of Iowa prison population reveals a like continued growth can be expected through 1985 and will most likely continue through the decade of the 1980's. While the Department of Social Services considered the construction of two new 500 bed facilities to replace the Iowa State Penitentiary and provide additional beds, the cost of nearly 70 million dollars placed this option beyond the means of the State Treasury. Governor Robert Ray has responded, however, in his recommendation to the Iowa Legislature to provide 5 million dollars for the conversion of 300 mental health beds for corrections use and 7.4 million for a 200 bed addition to an existing correctional facility near Iowa City. The Iowa Legislature is currently in debate regarding these expansion projects.

Based on current trends in the adult correction system, the Department of Social Services also estimates that it will require 584 additional and replacement corrections beds by April, 1985. This projected need for 584 prison beds imminents from three sources: (a) continued growth of 10 to 30 people sentenced over number of people released, (b) a court order has been received to reduce the Iowa State Penitentiary at Ft. Madison from an 867 facility to 550 bed facility by April 1, 1985 and (c) the need to operate the prison system at no greater than 95% capacity allowing for appropriate prisoner movement and classification.

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Another major concern of the corrections administrators in Iowa is that the rising inmate population has reduced the number of inmates working in industries from 20% of the population to 11% of the population. An increase in the volume of work and modernization of buildings and equipment are necessary if we are to productively involve a significant number of inmates working in correctional industries.

As Director of the Division of Adult Corrections for the State of Iowa I applaud the introduction of Senate File 186. With the myriad of economic problems the State faces in providing social programs for children, the poor and the elder it is becoming increasingly difficult to compete for the resources necessary to provide humane and safe environments within the correctional institutions. The Division of Adult Corrections in the State of Iowa sees a primary purpose of the correctional institution as a means of protecting the public while providing an opportunity for rehabilitative programs. We are, however, caught in the dilemma of maintaining a humane and secure environment while, at the same time, attempting to avoid allowing the potentially dangerous person to inhabit the streets because of limited space within the correctional institutions. You are well aware, within this last decade, the Federal Court system has become more involved in hearing complaints from the corrections resident as is evidenced by the 36 states which now have at least one major general conditions law suit with which to resolve in an inequitable and proper manner. The correctional institutions in Iowa, and in this country, have not deteriorated in recent years but the conditions have developed which compound our problem over decades of neglect. The State of Iowa, at this time, simply does not have all the resources to appropriately respond to these continuing dilemmas. Your work and support of Senate File 186 is drastically needed and sincerely appreciated.

My recommendations relating to this bill have to do with the standards of construction and funding process. It is my suggestion that the Clearinghouse be utilized exclusively for the collection and dissemination of information which reflects the latest concepts in the construction for criminal justice facilities and programs to manage and care for the residents. The Clearinghouse should not be utilized to develop construction and program standards since the American Correctional Association and the Commission on Accreditation have already developed stringent and appropriate standards. No new bureaucracies need to be formed for this purpose.

I would also recommend that funding be allocated on a 50-50 basis. This funding process will not only allow the states to become motivated and encouraged to improve the correctional facilities where needed and necessary but will discourage unnecessary and over-building of state and local jurisdiction facilities.

Thank you for this opportunity to describe the state of corrections concerns in Iowa and offer my opinions relative to Senate File 186. If at any time I can be of assistance or you need additional data please do not hesitate to contact me.

Senator GRASSLEY. Thank you, Hal.
Mr. Johnson.

STATEMENT OF PERRY M. JOHNSON, DIRECTOR, DEPARTMENT OF CORRECTIONS, MICHIGAN, AND THE ASSOCIATION OF STATE CORRECTIONAL ADMINISTRATORS

Mr. JOHNSON. Senator Grassley, Chairman Dole.

I thank you for the opportunity to come before you. I am going to just highlight a couple of points that are in my written testimony for the sake of brevity. I wish to speak in support of S. 186 on behalf of both the Association of State Correctional Administrators, of whom I am currently President, and the Michigan Department of Corrections, where I am director.

The deplorable conditions of the prison systems around the country has been very well described, including those succinct comments by you, Senator Dole.

Senator GRASSLEY. Mr. Johnson, I think we ought to make clear, for the record, as well as the audience and the entire committee, that you are speaking for the national association as well as the State of Michigan, because you are president of the national association.

Mr. JOHNSON. That is correct. They have authorized me to speak in support of it, and I have a couple of points which I think I will make earlier on.

There is one point that I think is implied, but I want to say it in case its importance is missed. The deplorable state of the prisons and jails is not going to continue indefinitely. The overcrowding will either be solved by increasing the lawful and proper capacity of the system, or by reducing the number of prisoners each system is allowed to house, and which of these solutions is going to prevail is going to have massive importance to the criminal justice system, to the law enforcement system, and to the general public.

Michigan's history, in terms of overcrowding, is very similar to that which you have heard described by Mr. Farrier and the people from New York. I want to summarize a couple of points. Our prison population, too, has just about doubled since the early 1970's.

MORE SERIOUS VIOLENT OFFENDERS

Senator DOLE. Could I just ask a question.

Is that because, as a previous witness indicated, the FBI and Federal agencies are turning more cases over to local jurisdictions, or is it increased crime rate, or is it tougher sentencing practices by judges?

Mr. JOHNSON. About 50 percent of that increase is due to the fact that we are getting more serious violent offenders who always did serve more time and were more likely to come to prison. The other 50 percent is a combination of some of the trade-off from the Federal system. Turning prosecution over to the State has been some of it. Some of it has been a hardening of attitude in the part of prosecutors and judges, and some mandatory sentencing laws that have been passed in Michigan. But 50 percent of that would have occurred if nothing had changed, just because of the shear

magnitude of the increase in serious violent offenders in the system.

In 1975, when we became overcrowded, there was no way that new institutions could be built and brought on line in time. We looked all over the State for facilities that could be converted. We converted a mental hospital and an Air Force base that the Federal Government turned over to us, a former Catholic seminary, an abandoned city house of corrections.

We brought on 3,000 beds plus 2,000 beds in community corrections, and it still was not enough. We had to convert space in our major institutions, gymnasiums, classrooms, and even a garage, that sort of thing, to try to house the prisoners. The net result of all of this is that we are now under a court order that limits the population of the prison system. I should point out that we have another 1,600 beds that are coming on line in the next few years.

This has been an enormous cost to Michigan, and Michigan has been in a state of depression, while the rest of the Nation has been in a recession, as I am sure you all know. It has been a very tough economic situation in Michigan.

To give you some idea of the magnitude of this problem nationwide, in Michigan alone, it would take 22 new 500-bed facilities to house the population which we are projecting, on the basis of current intake and length of sentence. We are now at 15,300, and we are projecting over 19,000 prisoners in the 1990's. If anyone feels that S. 186 is not needed, or is extravagant, they don't understand. They are unaware of the scope of this problem.

Some people are going to argue that we should explore the alternatives to incarceration. Do we really need all of these people in prison? I would like to speak just briefly to that, and really it supports what Mr. Farrier has said. These are just a couple of points, and I will not get into a lot of statistics.

There are approximately 47,000 persons in Michigan serving felony sentences today, 47,000. Fewer of 10,000 of these, or about one-fifth of the total, are serving sentences in anything which the public would consider prison housing, that is behind fences or walls. Four-fifths are on probation, parole, minimum security camps, halfway houses in the community. In other words, alternatives to prison are already widely used, and this is true in most other States, too.

Community corrections is by far the predominant means of handling felony offenders in the country today. When you screen through to get the better cases for minimum custody, community placement, probation and parole, the residual population in prisons is a pretty tough population and needs to be incarcerated.

S. 186 is fully needed. Attention must be turned to institutions which house the offenders who cannot be handled in the community. Anyone who claims that if new institutions are not built, they will not be used or needed, is ignoring the fact that they have not been built and they are needed.

There are a couple of points that the association asked me to bring to your attention, and one is in the area of clearinghouses, as described in the bill.

The concept of collecting and disseminating information about advanced construction practices is an excellent one, but the term "clearinghouse" is a redflag to many corrections administrators.

This is because under LEAA there was a requirement that Federal funded prison construction be approved through the clearinghouse process. Very often, unwise requirements were imposed, or wasteful construction practices were insisted upon, or there were conflicts between the demands of the clearinghouse and the willingness of the State legislature to approve. So we are glad to see the clearinghouse as it is described in S. 186.

There are two other points that I would like to make, and that is, again back to Mr. Farrier's comment about the professional standards of the American Corrections Association.

Those standards have been carefully developed over a number of years, and there is a process already in place for accreditation, and we think that merely a reflection to those professional standards in terms of the kind of construction that would be paid with partial Federal funds would be an efficient and appropriate way to go. We think that there is nothing inconsistent between those concepts and S. 186.

The second suggestion that they asked me to make is, if there is a matched funding basis. I realize there are several ways of funding that are implied in the bill, but if there is a match basis, the suggestion of the association, to avoid abuse, is to require that the funding be a 50-50 match basis.

This is a large enough Federal incentive to insure use of the funds, and it would stretch those dollars further than the old 70-30, 80-20, 90-10. At the same time, the match is large enough, so that no jurisdiction will spend where there is no real need to spend.

On behalf of the Association of Corrections Administrators, and myself, I thank you very much for this opportunity, and I will be glad to answer your questions or to submit further information that you might wish to receive.

Senator GRASSLEY. Before I go to Mr. Denton, I would like to ask you if my understanding is correct, and give you a chance to elaborate.

Michigan does have a master plan for additional building and improvement spread out over a 6-year period of time.

Mr. JOHNSON. We have a master plan that is required by the legislature. It has been submitted to the legislature for approval, and we hope to have it approved sometime this summer or early fall. It does not specify 6 years, but it is a master plan for long-range capital plan.

Senator GRASSLEY. Of \$400 million?

Mr. JOHNSON. That is the estimated price tag for the needs of the Department of Corrections as we see them through the 1990's, about \$400 million.

Senator GRASSLEY. Is that in today's dollars, or inflated dollars?

Mr. JOHNSON. In today's dollars. We did not work inflation into it.

Senator GRASSLEY. Is that all capital costs, or does that include recurring costs?

Mr. JOHNSON. No; that is all capital costs. The added annual operating costs at today's dollars would run between \$75 and \$100 million a year.

Senator GRASSLEY. Did I hear your association's suggestion correctly that where there is a 75-percent Federal match, you are suggesting that that be decreased to 50 percent?

Mr. JOHNSON. The recommendation the association asked me to bring was a 50-50 match, because your dollars would go further, and the States would tend to be more responsible in terms of being sure that they really need to build, because they would have to put up half the money.

Senator GRASSLEY. This is a 50 percent hard match, and not the soft match contributions like land?

Mr. JOHNSON. We are talking dollars for dollars.

[Prepared statement of Mr. Johnson follows:]

PREPARED STATEMENT OF PERRY M. JOHNSON, PRESIDENT, ASSOCIATION OF
STATE CORRECTIONAL ADMINISTRATORS AND DIRECTOR OF THE
MICHIGAN DEPARTMENT OF CORRECTIONS

Testimony of Perry M. Johnson concerning S. 186: (Mr. Johnson is President of the Association of State Correctional Administrators and Director of the Michigan Department of Corrections)

Thank you for the opportunity to testify on this very important legislation. I wish to speak in support of Senate Bill 186 on behalf of both the Association of State Correctional Administrators and the Michigan Department of Corrections.

The deplorable conditions within many of this nation's prisons and jails are wellknown. Chief Justice Berger has spoken to this issue frequently. Every administration since the publication of the reports of the President's Commission on Law Enforcement and Administration of Justice in 1967 has acknowledged it as a serious problem. One example after another in the national news services has illustrated the danger and inhumanity of these conditions for the past decade and more--the tragedies of Attica and New Mexico being the most vivid in all our minds. Since this is true and since Senator Dole's commentary in the congressional record for Jan. 21, 1981 provides so succinct and accurate a summary of the conditions arising from our dilapidated and overcrowded prisons and jails, there is little that I can add. But while it is a fact that these unsafe, inhumane and sometimes unconstitutional conditions have existed for far too long, it is also a fact that they must not and will not continue to do so indefinitely. Even now the nature of Corrections in the United States is undergoing profound and fundamental change--a change brought about by both internal and external forces.

Internally, Corrections practitioners themselves, through their professional organization, the American Correctional Association, have developed standards that, if met, will redress the ills of the system. An accreditation process based on these standards has been underway for several years and has resulted in a significant upgrading of those systems where it has been applied. The most significant external force, however, has been the intervention of state and federal courts where prison conditions have been found to have violated prisoners' civil rights or constitutional guarantees. By 1978 in the state and federal prison systems there were 82 court orders in force relating to conditions of confinement. Twenty-six of these had prison overcrowding as their basis. This number has undoubtedly grown during the past two or three years.

These two forces are the primary reasons I state with some certainty that the deplorable state of our prisons and jails will not continue indefinitely. If substandard facilities are not upgraded, they will be closed. In other words, overcrowding will either be solved by increasing the lawful and proper capacity of the system, or by reducing the number of prisoners each system is allowed to house. Obviously which of those solutions may prevail is a question of great importance for the rest of the criminal justice system and for the welfare of the general public.

I believe S. 186 is clearly predicated on the belief that we must increase the lawful capacity of the system by building new facilities and bringing old ones up to standard. But there are those who will take the opposite point of view--that we should simply close, or allow the courts to close,

existing facilities and find other means than incarceration to handle the convicted offender. The latter position is one which must be answered if this legislation is to have the considered support which it merits. I believe I can answer it best by some reference to our experience in Michigan because I am familiar with that, and because our situation is quite similar to that of many large industrial states, and the issues are the same almost everywhere.

Michigan's prison population has nearly doubled since 1973. Some of this no doubt owes to a tougher policy on the part of prosecutors and judges, but at least half of it owes directly to the increased volume of serious crime, especially violent crime, over which the criminal justice system has no control. That is a phenomenon, incidentally, which is apparently continuing; and it is a nationwide phenomenon.

Our first reaction to this increased pressure on the system was not the construction of more prisons. Our first reaction was the expansion of community programs. We developed incentives for the courts to use probation wherever possible. We greatly expanded the use of halfway houses in the community as alternatives to secure institutions—we have more than 2,000 prisoners in halfway houses today. You will find among Corrections professionals nationwide a preference for community programs wherever they are consistent with the safety of the public. The operation of prisons and the supervision of prisoners is not such a pleasant task that any sane person wants to do more of it than necessary. In most jurisdictions there has been a move towards community alternatives to incarceration. The point I am making is that few correctional administrators were sitting on their hands as the volume of flow through the courts increased. They were looking for other answers.

But in Michigan, by 1975, despite all our efforts, the flow into the prison system was such that we exceeded our capacity. We found ourselves in a crisis atmosphere in which there was no longer time for new construction to meet the immediate problem, even if money were available. We began looking for existing facilities we could convert to prison housing. We converted a mental hospital, an Air Force base, a former seminary, and an abandoned local house of corrections to that purpose. Through this method we added 3,000 prison beds. Even that was not enough.

In all of our major institutions it was necessary to convert program space to bed space. Gymnasiums, classrooms, dayrooms and even a garage were forced into service. Extra beds were crowded into camps and dormitories. Despite hard economic times, some new money was found for construction. Three new prisons were constructed and two new camps have been added. But with all of these measures, our prisons are still overflowing. And I have not even touched on the problems of operating oversized and overaged institutions which do not meet basic standards of constitutionality or humanity. We are under court order as a result of these conditions.

To give you some idea of the magnitude of this problem nationwide, in Michigan alone it would take 22 new 500-bed facilities to house the population which our current intake is producing and to replace those institutions which are too old and too huge. At current costs that is more than half a billion dollars for construction alone. And while I have used Michigan as an example, we are actually in better shape than many other states in this country as far as conditions I have described are concerned. If anyone feels that S. 186 is not needed or is extravagant, they must certainly be unaware of the scope of this problem.

But have we really explored alternatives to incarceration? Would Michigan, for example, really need all those prisons if it gave serious consideration to keeping offenders in the community rather than sending them to prison? I have avoided statistics, but one set of numbers may be worth placing into

the record: There are approximately 47,000 persons in Michigan serving felony sentences today. Fewer than 10,000 of these, actually about one-fifth of the total, are serving those sentences in anything which the public would consider to be prison housing--that is, behind fences or walls. Four-fifths are on probation, parole, in minimum security camps or in halfway houses in the communities. In other words, alternatives to prison are already widely used. Community corrections is by far the predominant means of handling felony offenders in this country today. Any jurisdictions which have not explored these alternatives should be encouraged or required to do so, but many, like Michigan, have virtually exhausted this avenue.

So S. 186 is fully needed; attention must be turned to institutions which house the offenders who cannot be handled in the community. Anyone who claims that if new institutions are not built they will not be used or needed is ignoring the fact that they have not been built and they are needed. The fact really is that if they are not built it will be necessary to keep people on the streets who are dangerous because there is no place for them to be which meets basic constitutional requirements.

Speaking for most of us who operate correctional facilities today, it is sad to have to choose between operating institutions in which intolerable conditions exist and the release of individuals about whom we have grave concerns--that is a no win choice. But the fact of the matter is we don't even have that choice; we are doing both. That is why we strongly support the passage of this vital legislation. We are not seeking an expansion of the system overall. We simply need to be able to handle the volume of cases we already have in a manner which is humane, safe and responsible. This is not out of some excessive sympathy with criminals. It is out of concern with the safety of the public. After all, almost all prisoners return eventually to the communities from which they came. If we house them in conditions which dehumanize them, the public later pays the bill for that neglect. And we simply must have adequate space in our institutions so sentencing and release decisions can be based on appropriate public policy which relates to each specific offender, not on the amount of bed space which happens to meet court standards. We are not asking for more or fewer beds than that, and we do not have them now.

Both in Michigan and nationally, years of neglect must now be made up. The states simply cannot carry this load alone; they have not been able to do it. So we support S. 186 as representing a commitment on the part of the federal government to assist in that endeavor.

Before I conclude, there are two points I should raise in connection with the implementation of the legislation, though not with the bill itself. The first is the matter of the clearinghouse described in the bill. The concept of collecting and disseminating information about advanced construction practices is an excellent one. But the term "clearinghouse" is a red flag to some correctional administrators. Under LEAA there was a national clearinghouse which was heavily involved in the grant review and approval process. Very often requirements and standards imposed by it were not at all appropriate in view of the needs of specific jurisdictions. As a result, funds were either foregone or had to be used for purposes and in a way which was wasteful. So we are glad to see that S. 186 provides a more constructive use of such an agency.

I should add that while we would be concerned about the use of a clearinghouse as a regulatory agency, we recognize the right and responsibility of the federal government to be sure funds are spent in an appropriate and progressive manner. No state or local government should be given a blank check to, in some cases, perpetuate and expand past practices which were never acceptable. To prevent this, we suggest two safeguards which the committee might want to consider in implementing this legislation:

The first is that all improvements and new construction funded by the act should be required to meet the standards for such construction which I referred to earlier--those initiated by the American Corrections Association and now supervised by the Commission on Accreditation. These standards are similar to, and perhaps more strict than, those developed recently by the Department of Justice. They should be more than adequate to ensure that any funds are expended properly, and since they were developed with full involvement of Corrections professionals, they are relevant to actual needs. Also, they would not require the creation of a new bureaucracy for their administration, and are already available for use as funding guidelines. I believe there is nothing inconsistent in S. 186 with that use of such standards.

The second suggestion to avoid abuse is to require that funding be on a fifty-fifty basis for match. This is a large enough federal incentive to ensure use of the funds, and it would stretch those dollars further. At the same time, the match is large enough so no jurisdiction will spend where there is no real need. This level of match will help ensure that a real exploration of alternatives to incarceration is made, so that construction monies are used only where the need is urgent and unavoidable.

On behalf of the Association of State Correctional Administrators, I thank you for this opportunity to testify on this very important legislation. If we may be of any help in securing its passage, I hope you will not hesitate to call on us for that assistance. Thank You.

Senator GRASSLEY. Now I would like to proceed to call Mr. Denton.

STATEMENT OF GEORGE F. DENTON, DIRECTOR, DEPARTMENT OF REHABILITATION AND CORRECTION, OHIO

Mr. DENTON. Thank you, Mr. Chairman.

I will be very brief. I submitted written testimony and also some enclosures, and I will be happy to supply the committee with any information from Ohio.

Ohio is not unique. Ohio is faced with the overcrowding. We are 3,000 spaces today over our rated capacity of our institutions, and that includes one institution owned by the Federal Government, leased by our department at Chillicothe, that presently houses 1,980 inmates.

We have a master plan completed for Ohio. It calls for five major new facilities or installations, and the replacement of two old institutions that were built during the 1800's. We are faced with a bottom dollar, just for our department, of \$350 million in new construction, those are 1981 dollars.

We are attempting to secure a bond authority under building authority, which will produce one-third of that amount of money, because they are revenue debt service retirement bonds, and our department will be limited in debt service revenue.

I think I will address the question that Senator Dole asked about what caused our population to be what it is today in Ohio. It is not quite double what it was in 1969, but it is very close. In fact, we are at a historical high number today of around 14,000.

In 1969 in Ohio, the common pleas courts convicted approximately 10,000 felons that year, and we received about 35 percent of those in our institutions--reformatories, and penitentiaries. Last

year, the same common pleas courts convicted 22,000 felons, and we received nearly 8,000, again around 39 percent.

That underlines the comment by the other directors which is that we are not housing all the felons that have been convicted in our institutions. We all have viable probation and parole programs, and we have twice the number incarcerated in community programs under supervision in Ohio as well.

We, also, in our building plans in Ohio, have considered, along with the recommendation of the master plan, the needs for the local communities, the counties and the cities for housing for misdemeanors. This is a very, very serious need in Ohio, and I am sure in most other States. Those facilities do not meet the standards of humane housing in most cases.

In fact, some of our commitments, I think, reflect the fact that the county jails can no longer house individuals, and there is pressure there to work through plea bargain, get a sentence, and put them on a bus and forward them to the State.

Most work houses are under court orders, at least in Ohio they certainly are, and are looking to be phased out or certainly demolished and rebuilt. The counties are hard pressed for funds also.

I have proposed four 500-man units to be built by the State to house misdemeanors on a per diem and contractual basis with the counties, cities, and other localities to generate revenue, which in turn would generate some bond retirement authority.

We also, in Ohio, need a central medical facility, it is very critical in Ohio, and it will cost \$10 million.

Another point that has not been made is the fact that the female commitment numbers by rate or percentage from the courts have increased more dramatically than the male. This is also true in Ohio. We are 250 over rated capacity at the women's reformatory.

I think only one other point that I would want to make in this brief summary would be that I concur with the recommendation of the administrators that there is need for looking at how the grants in this Senate bill would be set up and administered. I happen to favor block grant types to the State.

Thank you.

SUPREME COURT CASE

Senator GRASSLEY. Mr. Denton, you do have a case before the Supreme Court that you are expecting to be decided very shortly on the general subject of overcrowding in your State. Do you have any comments that you would like to make on that?

Mr. DENTON. That case is before the Supreme Court due to a decision by a Federal district court in 1977 which only pertains to our newest institution for maximum security. In that ruling the court found that of 12 particulars that we were alleged to be violating, none of those existed in violation of any law or standard, everything from medical care, food, clothing, and so forth.

However, the court ruled that it was designed for single-cell capacity, therefore, the court ordered single capacity. We have reduced to that number under his order because we could not get a stay. We think the decision should be reviewed by the Supreme Court because the cells at this new institution are 68 square feet,

there is a day room of around 30 square feet per man, in addition there is an excellent school program, work program, two gymnasiums, and two dining rooms.

We further feel that that particular facility should be used, certainly in an emergency, up to two per cell in those that the inmates are being released to programs 15 to 18 hours a day. Therefore, it is at the Supreme Court on that basis.

Senator GRASSLEY. Counsel would like to ask a question.

Mr. VELDE. Mr. Johnson, have you performed any calculations as to the amount of Federal funds that might become available to Michigan if it were authorized and fully funded according to the authorization levels?

Mr. JOHNSON. Any estimating is obviously highly speculative, but it looked to me as if there is a possibility of \$100 million that would perhaps come directly to felony institutions, depending on how it is split up, assuming that perhaps half of it goes to other areas of criminal justice, and a portion of it must go to county jails which have great need, and which we support.

So if there is \$150 to \$200 million, whatever that range is, it is obviously very significant help to the State to make the State dollars go further in an area of great need.

Mr. VELDE. What about the authority in the bill which contemplates Federal interest subsidies for what are described as criminal justice development bonds; would that be of any use to you in Michigan?

Mr. JOHNSON. I would see that as financial assistance. We have bonding authority in Michigan, and the first institution under this authority is now in the planning stage. The way it works, the bonding authority constructs the institution, and then in fact leases it back to us, and out of our operating funds comes the money to pay off the bonds and the interest on the bonds.

I have had no experience with it, obviously, this is the first one that is going to be constructed. I guess I would look upon it as an offset for the demand on annual operating costs if some of the interest were subsidized.

Senator GRASSLEY. I want to thank each and every one of you for your participation on this panel. You may expect communication from individual members of the subcommittee and committee by mail. If you do, we would appreciate your responding to those in writing for the record.

We appreciate your testimony. Thank you very much for coming.
[Prepared statement and additional submissions of Mr. Denton follow.]

TESTIMONY OF GEORGE F. DENTON, DIRECTOR
OHIO DEPARTMENT OF REHABILITATION AND CORRECTION

Ohio's correctional facilities have been seriously overcrowded since 1975. The inmate population has been climbing steadily for more than six years, with the total number of inmates last week exceeding 14,000 for the first time in the history of the state. This is nearly 3,000 in excess of the rated capacity of our nine current facilities.

Additional increases in the inmate population are projected for the foreseeable future. Attachment #1 reflects population projections submitted to the Committee on Finance and Appropriations of the Ohio House of Representatives in connection with the budget request submitted in February of this year. It will be observed that we have already exceeded the 1981 projection made in February. The projections were based on the rate at which offenders were being committed and the length of sentences. Both rates have increased beyond our expectations.

Prison commitments were above the 7,000 mark for the second time in 1980. A record-setting figure of 7,728 inmates were received in fiscal 1980, and more than 8,400 were received in calendar year 1980. The Department is concerned about the rate at which these numbers are increasing, especially in light of court-ordered population reductions at three of our institutions and the court-ordered closing of the Columbus Correctional Facility in 1983. Our penitentiary intake rate is 30% in excess of what was projected just one and one-half years ago. Intake has exceeded 100 per week every week this year, and intake has exceeded the rate of release by at least 40 per week each week this year. The problem will compound further still if legislation currently pending before the Ohio General Assembly, which would mandate longer minimum sentences for various offenses, is passed, because this would further slow the rate of release.

A Unified Correctional Master Plan has been submitted which calls for major new construction. In 1980 the Ohio General Assembly enacted legislation appropriating seed money for architectural and engineering studies for the construction of a new reception center, to serve both the reformatory and penitentiary systems, as well as for regional minimum-medium security prisons in different parts of the state. We have been in the process of negotiating with the General Services Administration for the acquisition of federal land that we have leased since 1966 for the operation of the Chillicothe Correctional Institute. It is contemplated that the new reception center will be built on the same acreage. Both the Master Plan and the architectural studies recently completed also recommend the vacating and renovation of the Ohio State Reformatory at Mansfield to be used as a maximum security prison in northern Ohio.

Testimony of George F. Denton
Page two

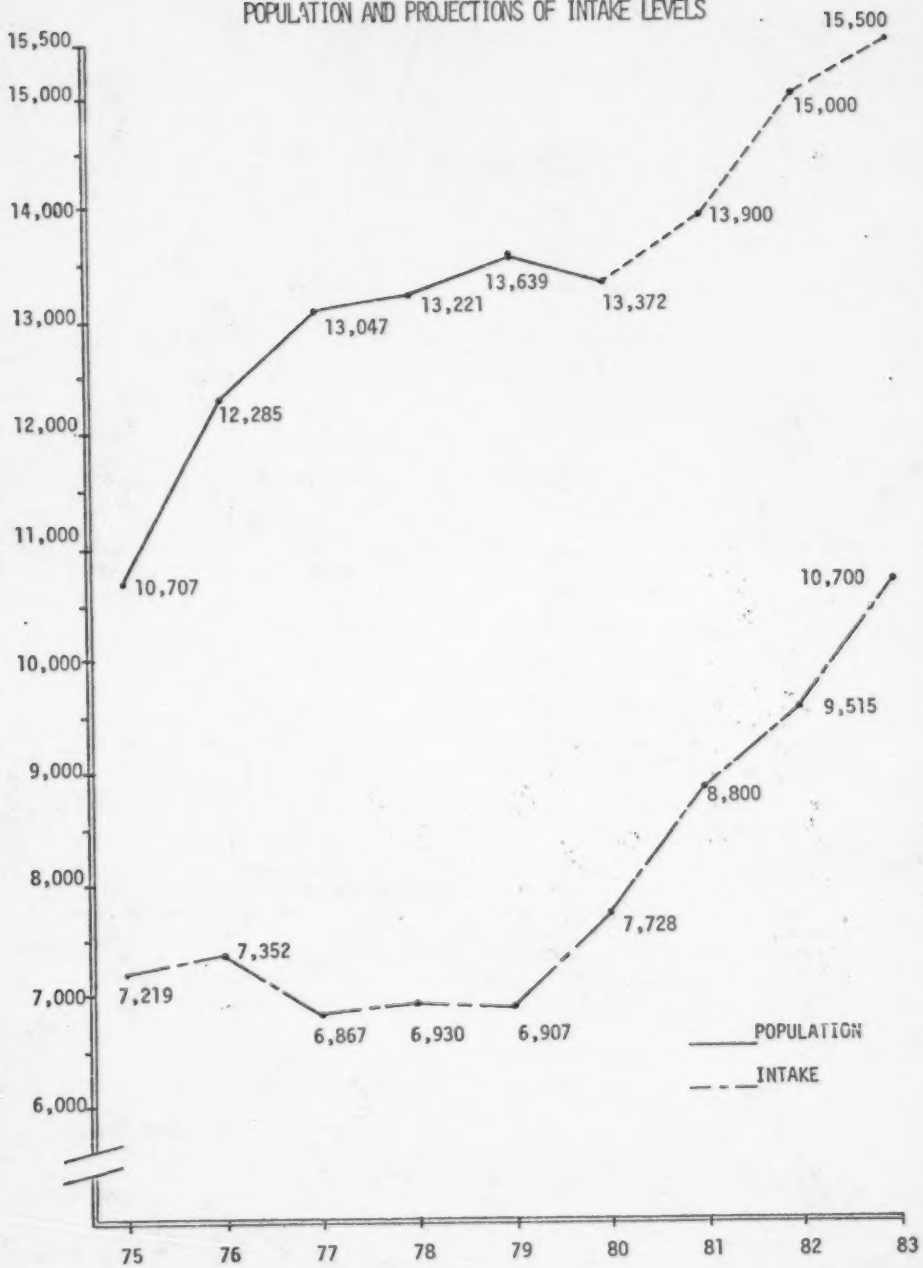
The various proposed units will add 3,000 beds at an estimated 1981 cost of \$250,000,000.00. It is also proposed that four regional facilities be constructed for the housing of convicted misdemeanants, these facilities to be located adjacent to the four proposed regional prison facilities. The estimated cost of this construction would be \$100,000,000.00. The purpose would be to provide facilities to be used by counties and municipalities on a contract basis in lieu of replacing numerous smaller facilities or enlarging antiquated facilities that presently house misdemeanants in the local communities.

Our plans also call for the addition of 350 beds at the Ohio Reformatory for Women in response to the fact that the incarceration of women has increased at an even higher rate than the increase in the male institutions. The proposal also calls for the construction of a central medical facility to serve the system. This facility would house inmates who are assigned to limited duty because of medical limitations, those chronically ill, those requiring infirmary care, and those recovering from surgery. The total cost of the additional facilities at the Ohio Reformatory for Women and the central medical facility would be approximately \$16,000,000.00.

It is contemplated that the proposed construction will be funded by revenues from bonds issued under the auspices of the Ohio Building Authority. These revenues are subject to a number of limitations, however. For example, in 1981 it will provide no more than \$20,000,000.00 debt service to retire \$97,000,000.00 in bonds. Thus, less than one-third of the proposed construction can be contracted for under present fiscal realities.

The problem of overcrowding is epidemic, it is dangerous, and requires massive expenditures of funds to meet even minimal standards. Even if funding can be obtained for all of our proposed construction plans, we will still be required to utilize "double bunking" in both cells and dormitories, a practice that is not in conformity with standards of either the American Correctional Association or the U.S. Department of Justice with respect to desirable inmate housing.

DEPARTMENT OF REHABILITATION AND CORRECTION
POPULATION AND PROJECTIONS OF INTAKE LEVELS



STATE OF OHIO



DEPARTMENT OF REHABILITATION AND CORRECTION

1050 Freeway Drive, North, Suite 403

Columbus, Ohio 43229

(614) 466-6190

JAMES A. RHODES, Governor

GEORGE F. DENTON, Director

TO: Robert Howarth, Executive Assistant to the Governor

FROM: George F. Denton, Director of Corrections *GF Denton*

SUBJECT: Projected Cost for Implementing H.B. 1033 and Related Construction

DATE: March 12, 1981

House Bill 1033, which took effect October 9, 1980, provided funds for architectural and engineering plans for the construction of a new joint reception center in Chillicothe to serve both the penitentiary and the reformatory systems and mandated feasibility studies for prison construction in four other locations. Each facility is to be limited to 500 beds, with the new reception center containing two separate units of that size.

The proposed construction will not, by itself, be sufficient to offset the combination of federal court-ordered population ceilings for existing institutions, the scheduled closing of the Columbus Correctional Facility by the end of 1983, and a felony commitment rate that continues to rise. Renovation of the Ohio State Reformatory at Mansfield for use as a 1,200 bed maximum security prison for Northern Ohio is also needed, as well as construction of a medical facility and housing for the work cadre serving the facilities and a new housing unit at the Ohio Reformatory for Women. Each of these recommendations were contained in the Unified Correctional Master Plan, but were not addressed by H.B. 1033.

It is also proposed that satellite facilities be constructed near the four regional facilities for the purpose of housing misdemeanants for cities and counties on a contract basis. The contractual arrangements proposed would produce income on a per diem basis for both operational expenses and debt retirement. It is our estimate that 2,000 misdemeanants could be housed in such regional facilities for \$28,800,000 per year gross; under our proposal that cost would be met by the per diem paid by the local governmental units, one half going for operational expenses and one half going to debt retirement.

This proposal, which was also one of the recommendations embodied in Ohio's Unified Correctional Master Plan, would alleviate the present overcrowding of local facilities, which in turn has had a direct impact on and has contributed to the population pressures on state facilities.

Listed below are cost projections for the various phases of construction contemplated:

<u>Phase</u>	<u>Estimated Cost</u>
A. Reception Center Construction in Chillicothe (as required by H.B. 1033) and construction of a central medical unit for the prison system (as recommended by the Unified Correctional Master Plan but <u>not</u> within H.B. 1033)	\$ 83 million
B. Four additional facilities (as proposed in H.B. 1033; however, H.B. 1033 should be amended to remove the 500 person limit on size and to remove the specification of Cincinnati and Dayton as locations; the sites recommended by the architects are Lebanon, London, Lima and Grafton)	\$ 100 million
C. Four auxiliary misdemeanor facilities to serve cities and counties on contract (as recommended by the Master Plan but <u>not</u> included in H.B. 1033)	\$ 100 million
D. Renovation of Ohio State Reformatory (as recommended in the Master Plan but <u>not</u> included in H.B. 1033)	\$ 60 million
E. Construction of housing unit at the Ohio Reformatory for Women with a capacity of 300 (as recommended by the Master Plan but not included in H.B. 1033).	\$ 7 million
	<u>\$ 350 million</u>

PROJECT IMPLEMENTATION

This section discusses the time line and probable cost of implementation for the project. Construction costs are developed first, without regard to time of construction, based on programmatic requirements as to the quantity and quality of building space required for each functional component. An overall project schedule is then developed in order to establish the time period during which each block of funds will be expended. This permits the calculation of overall funding requirements, including anticipated escalation, and the determination of cash flow as well as the dates on which encumbrance of funds by contractual commitment must be made.

A word about escalation. The impact of future inflation of construction costs on funding requirements is reflected by the application of a factor based on the consultants' best judgement. It goes without saying that the accuracy of this factor cannot be guaranteed. A guess, pure and simple, based on experience, is the hardest data that can be had. The factor used in this report is 0.75% per month, or approximately 9.4% per annum.

Construction Cost

The following estimated costs are intended to assist in establishing an overall preliminary budget for the total project scope presently anticipated. It should be noted that, particularly with regard to sitework and utilities, these costs are based on very general and preliminary data. Nevertheless, the component method of analysis used in the development of this program permits the application of specific unit costs for each building type required, and results in a reasonably accurate prediction of cost, adequate to the purpose of establishing an overall project budget.

Construction costs are developed in current (January 1981) dollars, and escalation to the anticipated bid date must be added to obtain actual funding required. Construction costs reported in the tabulation immediately following DO NOT include the following: escalation, land cost, planning contingencies, professional fees, borings and soils analysis, topographic survey, construction testing, construction inspection, construction contingencies, and furnishing and movable equipment.

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CONSTRUCTION COST

BUILDING CONSTRUCTION BY COMPONENT =				S.F.	x	\$/SF	=	\$
HOUSING	REFORMATORY	MED	400 @ 188 =	75,200	x	107	=	\$ 8,046,400.00
		MAX	100 @ 194 =	19,400	x	120	=	2,328,000.00
	PENITENTIARY	MED	300 @ 188 =	56,400	x	107	=	6,034,800.00
		MAX	200 @ 194 =	38,800	x	120	=	4,656,000.00
	SWING	MED	100 @ 188 =	18,800	x	107	=	2,011,600.00
	SPEC. CUST.	MAX	96 @ 210 =	20,150	x	124	=	2,498,600.00
	CADRE	MED	175 @ 190 =	33,250	x	103	=	3,424,750.00
SUBTOTAL				1371 BEDS		262,000 S.F.		= \$ 29,000,150.00
OPERATIONS	GEN. ADMIN.			7,880	x	72	=	567,360.00
	CUSTODY ADMIN.			9,290	x	76	=	706,040.00
	RECEPTION			7,590	x	76	=	576,840.00
	CLASSIFICATION			9,840	x	72	=	708,480.00
	HEALTH SERVICES			18,300	x	88	=	1,610,400.00
SUBTOTAL						52,900 S.F.		= \$ 4,169,120.00
SUPPORT SERVICES	DINING			10,200	x	68	=	693,600.00
	KITCHEN			11,940	x	92	=	1,098,480.00
	WAREHOUSE			31,720	x	54	=	1,712,880.00
	QUARTERMASTER			3,290	x	54	=	177,660.00
	MOTOR POOL			4,860	x	48	=	233,280.00
	MAINTENANCE			2,980	x	54	=	160,920.00
	MAJOR CIRCULATION			48,000	x	30	=	1,440,000.00
	MECHANICAL			10,220	x	48	=	490,560.00
SUBTOTAL						123,210 S.F.		= \$ 6,007,380.00
INMATE SERVICES	VISITING			10,110	x	72	=	727,920.00
	RECREATION			14,250	x	64	=	912,000.00
	RELIGION			2,670	x	76	=	202,920.00
	LIBRARY			2,450	x	72	=	176,400.00
	COMMISSARY			3,080	x	76	=	234,080.00
	BARBER			1,000	x	84	=	84,000.00
SUBTOTAL						33,560 S.F.		\$ 2,337,320.00
TOTAL BUILDING CONSTRUCTION						471,670 S.F.		\$ 41,513,970.00

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SITework	EARTHWORK & PAVING (1)	\$ 2,020,000.00	
	FENCE/SALLYPORT/4 TOWERS	560,000.00	
	PERIM DETECTN & PATROL	360,000.00	
	SUBTOTAL	\$ 2,940,000.00	\$ 2,940,000.00
UTILITIES	ON-SITE DISTRIBUTION	\$ 1,440,000.00	
	WATER SYSTEM (2)	1,400,000.00	
	SEWAGE DISPOSAL (3)	3,200,000.00	
	STEAM GENERATION (4)	1,450,000.00	
	SUBTOTAL	\$ 7,490,000.00	\$ 7,490,000.00
FIXED EQUIPMENT	CENTRAL PLANT	800,000.00	
	MEDICAL	120,000.00	
	FOOD SERVICE	480,000.00	
	LAUNDRY (5)	\$ 40,000.00	
	SUBTOTAL	\$ 1,440,000.00	\$ 1,440,000.00
TOTAL PROJECT CONSTRUCTION COST IN JANUARY 1981 DOLLARS			<u>\$ 53,383,970.00</u>

NOTES:

- (1) Includes site drainage.
- (2) Includes new well and 250,000 gallon elevated tank, interconnection w/CCI water system, and treatment as follows: iron removal from all water, softening hot water & boiler feed only.
- (3) 2,000,000 GPD capacity to serve CRC plus all facilities currently served by existing CCI plant.
- (4) Main steam supply from CCI via new tunnel. Anticipates need for two 15,000 lb. gas/oil boilers at CRC for peak load and/or high pressure supply.
- (5) Additional equipment at CCI laundry.

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PROJECT SCHEDULE

Cash flow requirements developed in this report are based on the following anticipated schedule:

Task	Duration	Begin Date	Complete Date
DESIGN:			
Schematic Design	10 weeks	1 May 81	13 Jul 81
Department Review	(2) weeks	29 Jun 81	13 Jul 81
Basic Drawings	6 weeks	13 Jul 81	24 Aug 81
Department Review	(2) weeks	10 Aug 81	24 Aug 81
All Agency Review	2 weeks	24 Aug 81	7 Sep 81
Construction Documents	18 weeks	7 Sep 81	11 Jan 82
Department Review	(2) weeks	28 Dec 81	11 Jan 82
All Agency Review	2 weeks	11 Jan 82	25 Jan 82
Subtotal	38 weeks		
BID & AWARD:			
Bidding Period	4 weeks	25 Jan 82	22 Feb 82
Bid Eval. & Award	4 weeks	22 Feb 82	22 Mar 82
Subtotal	8 weeks		
CONSTRUCTION:			
Construction Period	92 weeks	22 Mar 82	31 Dec 83
Subtotal	92 weeks		
TOTAL PROJECT	138 weeks	1 May 81	31 Dec 83

It is anticipated that certain parts of the work may be constructed under smaller construction contracts separate from the general construction work. These are:

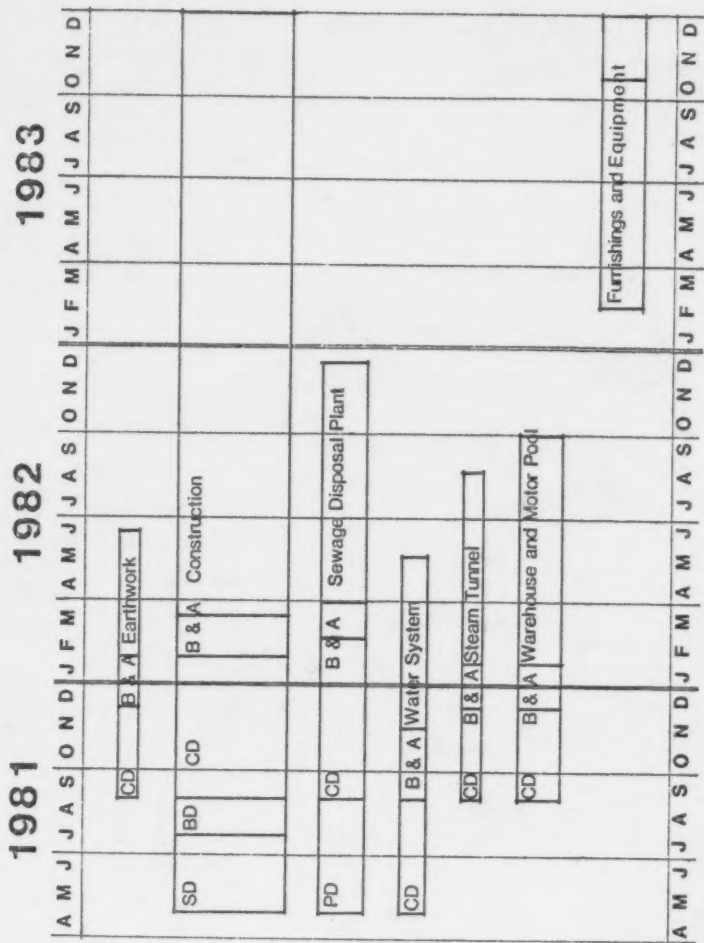
- Earthwork and Paving,
- Sewage Disposal Plant,
- Water System Improvements,
- Steam Tunnel, and
- Warehouse and Motor Pool.

The earliest feasible time line for these separate contracts is shown in the Project Schedule chart opposite.

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Project Schedule

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FUNDING REQUIREMENTS

Implementation of the project in keeping with the schedule set out above will require funding as follows:

TOTAL CONSTRUCTION COST IN JAN. 1981 DOLLARS		\$53,400,000
Escalation	<u>7,800,000</u>	
TOTAL ANTICIPATED CONSTRUCTION COST		\$61,200,000
Associate Architect Fee 5.8%	3,550,000	
State Architect Fee	<u>270,000</u>	
	3,820,000	\$65,020,000
Planning Contingency 5%	3,250,000	
Construction Contingency 5%	<u>3,250,000</u>	
	6,500,000	\$71,520,000
Soils Analysis & Topo	30,000	
Construction Testing	150,000	
Construction Inspection	300,000	
Movable Furnish. & Equip.	<u>2,800,000</u>	
	3,280,000	
REQUIRED FUNDING		\$74,800,000

Cash flow and commitment of funds is shown spread over the design and construction period in the chart opposite. Dollar amounts for construction contracts include escalation and contingencies.

MISSION

The Chillicothe Reception Center will serve as the primary intake and receiving institution for all adult male felons committed to the Department of Rehabilitation and Correction by the courts of Ohio. As such, its mission may be simply stated: to provide reception, orientation and initial classification services to each individual resident committed to the custody of the Department, including:

- identification and property disposition,
- establish and verify permanent records,
- establish medical health status at intake,
- collect and verify appropriate social data,
- determine initial classification, in terms of both security risk and rehabilitative program requirements,
- determine permanent institution assignment, and
- provide all housing, quartermaster, and other human needs services during the reception and classification period,

all in accordance with due process and established procedure administered by a qualified professional staff.

CRC will receive and process committed persons for both reformatories and penitentiaries, two distinct types of correctional facilities operated under state law in Ohio. Separation of the two groups will be made at CRC immediately upon arrival and will be maintained throughout the reception and classification process.

Enabling legislation for this project, House Bill No. 1033 of the 113th General Assembly, provides for a "maximum in-out capacity of 1,000 residents, of whom 500 shall be reformatory residents and 500 shall be penitentiary residents." The total number of beds appropriate to this population is discussed in the ARCHITECTURAL PROGRAM section of this report under the heading,

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Housing. A substantial number of "support beds" are required due to the transient nature of the population served, and to the necessity of assigning a separate inmate cadre for institutional operations.

The construction of CRC will permit the relocation of the major function served by the Columbus Correctional Facility (CCF), the reception and processing of sentenced persons into the Ohio penitentiary system, and is being undertaken by the State as a direct result of the decision to terminate the use of that institution. Other functions presently in operation at CCF and involving substantial numbers of inmates will, of course, have to be relocated as well, and the feasibility of continued association of these operations with the reception operations being relocated to CRC has been considered:

- The establishment of a central medical facility providing complete inpatient care services for the Ohio correctional system was a major recommendation of a study of the system's health service facilities conducted in 1979, and has been adopted as a long range goal of the Department. To some extent, this function is served at the present time by hospital facilities at CCF. Since realization of this goal prior to the closing of CCF is not possible, the Department will become entirely dependent on outside hospitals for acute medical care in the interim. Nevertheless, the inclusion of replacement facilities in the master plan for CRC is not considered feasible in view of the lack of availability of specialized medical skills in the immediate area. The study referred to above proposes a central medical facility to be operated at the Ohio State University Medical Center in Columbus. This alternative offers the potential of providing the highest quality medical service on an extremely cost-effective basis.
- CCF presently houses a large number of medium and maximum security inmates who have completed the reception and classification process, but for whom bed space is not immediately available at the assigned institution. The accrual of this population awaiting transfer has stabilized in recent years at a level of 300 to 400 men and will, of course, continue to occur when reception and classification operations are relocated to CRC. Provision of bed space in CRC is not, however, considered a suitable response to this

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need because the reception center facilities and staffing will not provide the range of training and work programs appropriate to classified inmates. The construction of additional capacity in new or existing mainline institutions is clearly the proper long range solution. An effective solution for the short range would be construction of temporary housing at CCI, because the proximity of the two institutions (CRC and CCI) will minimize the cost of transfer, and appropriate correctional programs are in operation there. The necessary physical facilities for this purpose are not, however, included in the CRC master plan.

- A Limited Duty Unit (LDU) is presently in operation at CCF for approximately 80 inmates requiring special programs and services due to physical handicap or disabilities. However, the CRC facilities and staffing are designed for the reception and orientation process and cannot efficiently provide for the program requirements of classified inmates. Appropriately designed housing facilities will be provided at CRC for approximately 10 such inmates during the course of their reception and initial classification process.

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OBJECTIVES

Among the more significant products of a pre-design planning process such as that reported here is the clear identification of the objectives to be achieved by the design of the proposed facility. The discernment of these objectives and their relative importance to the successful accomplishment of the institution's mission is a prerequisite to the perception of appropriate conceptual alternatives and the selection of the most viable concept. And they remain determining factors in the process of alternative perception and selection which continues throughout the design effort. The major objectives identified for this project are discussed in this section.

A distinction is made in Ohio law between two types of incarceration for adult felons and each is served by a separate group of correctional institutions. Reformatories are used for offenders under 30 years of age serving their first prison terms, and parole eligibility dates will occur sooner than in penitentiaries. The penitentiaries are typically used for repeat offenders and offenders over the age of thirty. Although judges can exercise sentencing prerogatives, the Ohio Revised Code gives the responsibility for deciding where offenders are housed to the Department. Separation of the two groups is mandatory and will begin immediately upon arrival at CRC for processing into either system.

The employment of inmates in institutional operations not related to security is an accepted practice in correctional institutions, in that it provides needed work opportunity for a limited number of inmates and lessens the economic burden on the state. Normally, this staff, or "cadre" is drawn from the assigned population. At a reception center, however, the cadre constitutes the only permanently assigned population, a completely separate and, in the present case, third distinct inmate group.

Consequently, the concept and design of CRC must be such as to facilitate the maintenance of three distinct population groups in a single institution.

Reception of adult male felons into the Ohio correctional system is presently accomplished at two separate facilities, penitentiary inmates at the Columbus Correctional Facility (CCF) and reformatory inmates at the Ohio State Reformatory (OSR) at Mansfield. Construction of this project will centralize these

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operations, creating the opportunity for substantially increased efficiency in reception and initial classification operations. Realization of the full potential of this opportunity will depend on the degree to which the concept and design of the facility permits the operation to be managed by a single staff utilizing, insofar as possible, a single set of the required support components.

A related objective arises from the necessity to accommodate two distinct reception population groups. Although the enabling legislation provides for groups of equal size, current experience is somewhat different in that a larger population is being processed into the penitentiary system (CCF) than the reformatory system (OSR). In any case, it cannot be reasonably anticipated that the two groups will either become completely equalized or remain so during the expected useful life of the proposed reception center. A concept for CRC which provides at least some portion of the 1000 man capacity which can be utilized as a part of either side is therefore indicated, and this must be accomplished without compromising the ability to maintain the separation of the two populations.

The direct and personal participation of each individual inmate in reception, orientation, and initial classification procedures will result in the high level of inmate movement typical of reception centers. Moreover, it should be anticipated that a large number of relatively small groups will be moving about the facility on a daily basis. Consequently, a configuration of circulation spaces which permits a high degree of observation and control by a minimum of staff is a major objective. Another characteristic of inmate movement will be a relatively short length of stay, one or two hours, at each destination. Minimization of travel distances will have a direct and highly significant impact on the aggregate number of manhours required for control and surveillance of inmate movement, and further efficiencies can be realized to the extent that required fixed posts (as at housing units) provide the capability of observation of inmate movement routes.

A final consideration, in terms of concept determinants, is that of the proximity of the proposed facility to the Chillicothe Correctional Institution (CCI), an established permanent facility in operation by the Department. To the extent that support components at CCI have additional available capacity, the cost of constructing and staffing these components at CRC may be reduced or eliminated.

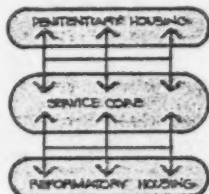
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PROPOSED CONCEPT

The proposed concept envisions a very simple configuration consisting of three co-linear elements. Housing and housing-based functions, the inmate's home-base, will constitute the two outer elements, one serving the penitentiary group and one serving the reformatory group. The central element, composed of support service facilities, will contain virtually all frequent destinations of inmate movement. The resultant spaces along each side of the service core are ideally suited to inmate movement between housing and support components, and appropriate sizing of these spaces will permit their use as semi-exterior spaces, or malls, for the transmission of natural light and/or ventilation to the central element and to the inner side of the housing elements. The central location of support facilities in a linear element permits access at a large number of points and from either side, in keeping with the requirement for a single set of support components operated by a single staff.



The concentration of all components along the malls produces a single unitary structure and results in a minimization of travel distances and of the ratio of exterior surface to plan area. The malls may be operated as interior spaces in winter, substantially reducing the amount of surface area subject to heat loss; and, since a very small percentage of the volume is to be air-conditioned, as exterior spaces in the summer when a maximum exposure to natural ventilation is needed.

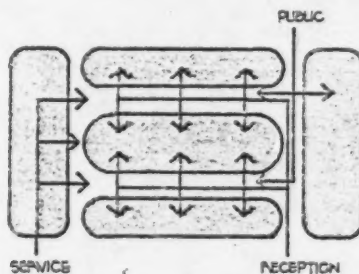
This configuration of the major elements serving the reception population affords the opportunity to enter either the reformatory or penitentiary side from outside at either end. One end is designated for vehicular access and this end of the support

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services core will contain those components requiring service access (kitchen, quartermaster). The other end is designated for pedestrian access and components having strong relationships to the outside (visiting, administration, reception) will be located at this end of the support services core. This arrangement achieves a complete separation of pedestrian and vehicular movement.



A separate cadre compound, including housing and all cadre support facilities subject to evening shift operation, will be located outside the pedestrian access end. This arrangement provides complete separation of off-duty cadre from the reception population with access to the reception compound via the same control points which supervise other pedestrian traffic.

This concept is analyzed in the following pages in terms of the major aspects of its performance:

- Component Deployment,
- Circulation and Zoning,
- Security,
- Environmental and
- Utilities

**Chillicothe
Reception Center**

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BUDGET ESTIMATE

Preface

The following estimate of probable cost is intended as a guide to the fund requirements associated with the institution outlined in the preceding pages.

The costs shown represent a budget estimate only, are stated in FEBRUARY, 1981 dollar values, and do not include any contingency sum that might be needed due to possible design variances, market conditions at the time of bidding, and the like.

The different per square foot dollar cost values shown for the various components represent a variation in finishes and mechanical and electrical requirements primarily. In the utility type structures such as central stores, maintenance, and the like, the difference also includes type of structure variations allowable under the applicable building codes and regulations.

The values shown pertain to no specific site and no abnormal construction conditions are anticipated.

No escalation, as currently experienced, is included and to obtain actual funding requirements there must be added a sum to represent anticipated building cost increases due to inflation. These inflation values should be such as to reflect costs at the midpoint of construction.

In summary, the budget costs shown DO NOT include:

- Escalation due to inflation in costs to the construction period.
- Contingencies.
- Land acquisition costs.
- Borings and Soils Analysis.
- Topographic Surveys.
- Construction testing, inspection, and contingencies.
- Movable Equipment and Furnishings.
- Professional fees, such as State, Legal, Architectural, and Engineering.

6.02

BUDGET ESTIMATE

HOUSING

Main Line (Medium Security)	93,120	102	\$ 9,498,240
Living Support			
Honor Dorm (Minimum Security)	9,135	80	730,800
Disciplinary, Pre-Detention, Transfer & Investigation, and Security Hold (Security Cells)	7,135	126	899,010
Orientation & Assignment (Medium Security)	10,330	110	<u>1,136,300</u>
			\$12,264,350

OPERATIONS

Administration	7,640	63	\$ 481,320
Custody Administration	8,900	70	623,000
Orientation & Assignment	1,070	70	74,900
Health Services	7,400	78	577,200
Kitchen	10,624	75	796,800
Inmate Dining	7,960	65	517,400
Staff Dining	1,830	70	128,100
Central Stores	10,790	50	539,500
Quartermaster	2,570	50	128,500
Laundry, Clothing and Shoe Repair	4,000	50	200,000
Garage & Fire Station	4,350	50	217,500
Maintenance	4,930	50	246,500
Power Plant	4,875	54	263,250
Electrical Equipment			135,000
Mechanical Equipment			<u>570,000</u>
			<u>968,250</u>
			\$ 5,498,970

SERVICES

Visiting	4,730	70	\$ 331,100
Classification & Treatment	1,850	70	129,500
Religion	3,000	75	225,000
Education			
Administration 1650		65	107,250
Academic 6000		60	360,000
Vocational 12350		55	<u>679,250</u>
Multi-Media (Library)	3,500	60	210,000
Multi-Purpose (Gym)	13,350	60	801,000
Inmate Services	1,952	60	<u>117,120</u>
			\$ 2,960,220

BUDGET ESTIMATE

TOTAL BUILDING CONSTRUCTION COST (Excl. Industry)			\$20,723,540
INDUSTRY	31,960	50	<u>1,598,000</u>
TOTAL BUILDING CONSTRUCTION COST (Incl. Industry)			\$22,321,540
PERIMETER SECURITY			
Fencing	\$450,000		
Vehicular Sallyport	52,500		
Adm. Intrusion Detection	50,000		
Guard Towers	<u>255,000</u>		807,500
SITEWORK & UTILITIES			<u>\$ 3,500,000</u>
SUBTOTAL (Water & Sewage Available)			\$26,629,040
ADD-WHERE NECESSARY:			
Water - 2 wells with pumps, chlorination well house, 140,000 gal. storage tank, and 1000 ft. 8" main.			\$ 800,000
Sewage - Package lift station, 150,000 gal/day package plant Class II, slab and sludge drying beds, treatment facilities, and 3000 ft. 10" gravity line			<u>\$ 820,000</u>
TOTAL FOR WATER & SEWAGE			\$ 1,620,000
SUBTOTAL (With Water & Sewage added)			\$28,249,040
ENCLOSED WALKWAYS	14,000	20	<u>280,000</u>
GRAND TOTAL CONSTRUCTION COST BUDGET ESTIMATE			\$28,529,040

6.04

BUDGET ESTIMATE

OTHER COSTS

FIXED EQUIPMENT			
Food Service	\$290,000		
Medical	85,000		
Laundry	<u>90,000</u>	\$ 465,000	\$ 465,000
SURVEYS, BORINGS, INSPECTION & PRINTING			<u>90,000</u>
TOTAL OTHER COSTS			\$ 555,000

Senator GRASSLEY. We are going to combine panels III and IV because Mr. Milliken could not be here from the State of Utah. So at this time, I would like to call Amos E. Reed, director of Adult Corrections Division of the State of Washington; Ronald J. Marks, commissioner for the Bureau of Corrections, Pennsylvania; W. Joseph McCoy, commissioner, Department of Corrections of the State of West Virginia; and Robert G. Britton, commissioner, State Department of Corrections for the State of Alabama.

I would like to call upon Mr. Reed first.

STATEMENT OF AMOS E. REED, DIRECTOR, ADULT CORRECTIONS DIVISION, STATE OF WASHINGTON, AND PRESIDENT OF THE AMERICAN CORRECTIONAL ASSOCIATION

Mr. REED. Senator Grassley, I am Amos Reed, president of the American Correctional Association, and director of the Washington State Division of Adult Corrections. I speak in reference to both of these bodies.

In order to know where I come from, and my experience in criminal and adult corrections spans over 35 years, to which can be added 7 years in public education and public welfare. My career has included leadership assignments in the States of Illinois, Oregon, Florida, North Carolina, and Washington.

This experience has been enhanced by serving as a consultant to many States and organizations, and by active leadership in numerous public and private commission boards, and social services agencies. So I take a rather broad viewpoint in the way I approach the subject.

I speak very strongly in favor of S. 186. I would like to say that the time for generalized justification for expenditures for jail and prison construction is long past. Many States are moving beyond a state of continuing emergency into a state of disaster.

This should be no surprise to the Congress, to the collective State legislatures, or to the general public. Correctional leaders have done their best, under very trying circumstances, to communicate the urgent need for attention to jail and prison construction, and to the inadequacy and overcrowding.

To this very day, many discount this need, saying that virtually all offenders can be managed in small community centers. Their position maintained while prisons deteriorated in program and physical environment.

Prison populations continue to swell in spite of the claims that fewer people would go to prison if no further prisons were built. The criminal justice decisionmakers—police, prosecuting attorneys, judges, and correctional leaders—know full well that offenders have become so dangerous and so hardened in their criminal behavior that they must be removed from the local community.

The Federal courts have repeatedly ruled that the governmental entities must provide detention and incarceration facilities and programs that rise to constitutionally acceptable levels of legality and humanity. In short, if prisons and jails are to be used, then they must be suitable.

As all of us are so painfully learning, far too many places of imprisonment are unacceptable in many respects. Thousands of prisoners sentenced to State facilities remain in county jails. Thousands of prisoners are crowded into substandard housing units while hundreds sleep on mattresses on the floor of hallways, recreation areas and other unsuitable quarters as Director Johnson just pointed out.

The prison environments increasingly are becoming jungle environments where the strong and the maladjusted prey upon the weak and passive. This is a shame to us as a nation. It indicts our good sense. This is not mere rhetoric or theoretical conjecture, this is a description of a real prison world. Pretending that it does not exist is to live in a dream world where reality and suffering are ignored.

We are experiencing rising levels of crime and misconduct that are taking on the reality of anarchy. In some communities, and in many prisons and jails, Senator, anarchy is already here.

Those of us in the field of corrections have been keenly aware that the prisons and jails provide the protective strongholds for the general community. As these strongholds are breached and become ineffective, the communities deteriorate toward anarchy.

In the State of Washington, we are under Federal and State orders to reduce the population of our prisons. We are under orders to accept prisoners in the prisons. We are caught in a serious dilemma.

I should point out that the average daily present population in the State of Washington increased 50 percent in the past 10 years. During this same time, the parole and probation population increased over three times, and our work release increased 20 times. So, to say that the diversions and the alternatives are being ignored simply is not true.

Our problems are deep. They are endemic. I think what we are saying here today is already generally known. As I said, sir, with all due respect, it is time to act.

Thank you.

Senator GRASSLEY. Mr. Reed, thank you very much.

I need to apologize because when I introduced you, I did not introduce you as president of the American Corrections Association. I want to acknowledge that for the committee, the record,

and the people in the audience, and tell you that we appreciate your leadership in that area, and obviously it is a recognition of your leadership in this area over a lifetime. I want to congratulate you.

I would also like to ask you, if I could, because I know that the facility at McNeil Island was previously a Federal facility which we closed down, and I know you are making some use of it. Do you have any comment on how it is working out, or whether or not it is of any benefit to you?

Mr. REED. Yes, sir. Just this morning, I was chatting with the Bureau of Prisons director, Norman Carlson, and I was thanking him for the 100 percent cooperation that we have received from him and all of the Federal authorities.

Everyone knows that trying to remodel an older facility is not the ideal, but I assure you that it is far better than much of what we were presenting to the prisoners.

There is much at McNeil Island that is suitable. Our legislature and our executive department have looked at this very carefully. We have something over 200 prisoners there now. We are planning for 250 by June 30. We are planning for 500 by the end of the year.

This is suitable for us. It is not the ideal, but nevertheless these are good facilities. We are most appreciative of the cooperation that we are getting from the Federal Government.

Just as it has been mentioned before, we are reaching in all directions, as are other States. When we were in North Carolina, we brought former training schools on line. We remodeled a forensic unit there for a very fine medium custody facility.

So we are reaching out in all directions. We know that the funds are limited, they are very limited on the Federal and, of course, on the State level, and we cannot overlook any reasonable, suitable facility. McNeil Island certainly is one of those.

Senator GRASSLEY. Thank you very much.

[Prepared statement of Mr. Reed follows:]

PREPARED STATEMENT OF AMOS REED, PRESIDENT, AMERICAN CORRECTIONAL
ASSOCIATION AND DIRECTOR, WASHINGTON STATE DIVISION OF ADULT
CORRECTIONS

MR. CHAIRMAN:

I AM AMOS REED, PRESIDENT OF THE AMERICAN CORRECTIONAL ASSOCIATION
AND DIRECTOR OF THE WASHINGTON STATE DIVISION OF ADULT CORRECTIONS.

MY EXPERIENCE IN JUVENILE AND ADULT CORRECTIONS SPANS ACROSS 35
YEARS, TO WHICH CAN BE ADDED 7 YEARS IN PUBLIC EDUCATION AND PUBLIC
WELFARE. MY CAREER HAS INCLUDED LEADERSHIP ASSIGNMENTS IN THE STATES
OF ILLINOIS, OREGON, FLORIDA, NORTH CAROLINA AND WASHINGTON. THIS
EXPERIENCE HAS BEEN ENHANCED BY SERVING AS CONSULTANT TO MANY STATES
AND ORGANIZATIONS AND BY ACTIVE LEADERSHIP IN NUMEROUS PUBLIC AND
PRIVATE COMMISSION BOARDS AND SOCIAL SERVICE AGENCIES.

I SPEAK IN FAVOR OF SENATOR DOLE'S BILL S.186 THAT WOULD PROVIDE
ASSISTANCE FOR COMPREHENSIVE CRIMINAL JUSTICE CONSTRUCTION AND SUBSIDY
PAYMENTS ON FACILITY CONSTRUCTION BONDS.

THE TIME FOR GENERALIZED JUSTIFICATION FOR EXPENDITURES FOR JAIL AND
PRISON CONSTRUCTION IS LONG PAST. MANY STATES ARE MOVING BEYOND
A STATE OF CONTINUING EMERGENCY INTO A STATE OF DISASTER.

THIS SHOULD BE NO SURPRISE TO THE CONGRESS, TO THE COLLECTIVE STATE
LEGISLATURES OR TO THE GENERAL PUBLIC. CORRECTIONAL LEADERS HAVE
DONE THEIR BEST, UNDER VERY TRYING CIRCUMSTANCES, TO COMMUNICATE THE
URGENT NEED FOR ATTENTION TO JAIL AND PRISON INADEQUACY AND OVERCROWDING.

TO THIS VERY DAY, MANY DISCOUNT THIS NEED, SAYING THAT VIRTUALLY
ALL OFFENDERS CAN BE MANAGED IN SMALL COMMUNITY CENTERS. THEIR
POSITION MAINTAINED WHILE PRISONS DETERIORATED IN PROGRAM AND
PHYSICAL ENVIRONMENT.

PRISON POPULATIONS CONTINUE TO SWELL IN SPITE OF THE CLAIMS THAT
FEWER PEOPLE WOULD GO TO PRISONS IF NO FURTHER PRISONS WERE BUILT.
THE CRIMINAL JUSTICE DECISION MAKERS--POLICE, PROSECUTING ATTORNEYS,
JUDGES AND CORRECTIONAL LEADERS--KNOW FULL WELL THAT OFFENDERS
HAVE BECOME SO DANGEROUS AND SO HARDENED IN THEIR CRIMINAL BEHAVIOR
THAT THEY MUST BE REMOVED FROM THE LOCAL COMMUNITY.

THE FEDERAL COURTS HAVE REPEATEDLY RULED THAT THE GOVERNMENTAL ENTITIES MUST PROVIDE DETENTION AND INCARCERATION FACILITIES AND PROGRAMS THAT RISE TO CONSTITUTIONALLY ACCEPTABLE LEVELS OF LEGALITY AND HUMANITY. IN SHORT, IF PRISONS AND JAILS ARE TO BE USED, THEN THEY MUST BE SUITABLE.

AS ALL OF US ARE SO PAINFULLY LEARNING, FAR TOO MANY PLACES OF IMPRISONMENT ARE UNACCEPTABLE IN MANY RESPECTS. THOUSANDS OF PRISONERS SENTENCED TO STATE FACILITIES REMAIN IN COUNTY JAILS. THOUSANDS OF PRISONERS ARE CROWDED INTO SUB-STANDARD HOUSING UNITS WHILE HUNDREDS SLEEP ON MATTRESSES ON THE FLOORS OF HALLWAYS, RECREATION AREAS AND OTHER UNSUITABLE QUARTERS.

THE PRISON ENVIRONMENTS INCREASINGLY ARE BECOMING JUNGLE ENVIRONMENTS WHERE THE STRONG AND THE MALADJUSTED PREY UPON THE WEAK AND PASSIVE. THIS IS NOT MERE PHETORIC OR THEORETICAL CONJECTURE. THIS IS A DESCRIPTION OF A REAL PRISON WORLD. PRETENDING THAT IT DOES NOT EXIST IS TO LIVE IN A DREAM-WORLD WHERE REALITY AND SUFFERING ARE IGNORED.

WE ARE EXPERIENCING RISING LEVELS OF CRIME AND MISCONDUCT THAT ARE TAKING ON THE REALITY OF ANARCHY. IN SOME COMMUNITIES, AND IN MANY PRISONS AND JAILS, ANARCHY IS ALREADY HERE.

THOSE OF US IN THE FIELD OF CORRECTIONS HAVE BEEN KEENLY AWARE THAT THE PRISONS AND JAILS PROVIDE THE PROTECTIVE STRONGHOLDS FOR THE GENERAL COMMUNITY. AS THESE STRONGHOLDS ARE BREACHED AND BECOME INEFFECTIVE, THE COMMUNITIES DETERIORATE TOWARD ANARCHY.

I URGE THE CONGRESS TO SUPPORT S. 186 AND TO MOVE TO ITS IMPLEMENTATION WITHOUT DELAY.

Senator GRASSLEY. Mr. Marks.

**STATEMENT OF RONALD J. MARKS, COMMISSIONER, BUREAU
OF CORRECTIONS, PENNSYLVANIA**

Commissioner MARKS. I have a brief statement that I will read.

Senator GRASSLEY. Let me clarify, if you had not heard in the past, your statement, regardless of its length, will be made a part of the record. You may proceed as you wish, but we would appreciate it very much if you would summarize. Thank you.

Commissioner MARKS. I appreciate this opportunity to discuss the pressing need for new prison construction. Although my testimony will deal primarily with Pennsylvania, it is apparent from national surveys that our circumstances are representative of a nationwide trend.

The Nation's prison population has increased every year since 1969, and over 60 percent of all prisoners in America share living quarters with one or more inmates.

The Commonwealth of Pennsylvania operates seven State correctional institutions, which house offenders with maximum sentences of 2 years or more.

We also operate two regional correctional facilities for short-term offenders. In addition, Pennsylvania has 68 county jails which house short-term offenders and detentioners.

During the past 12 months, the population of Commonwealth-run institutions has increased by 7.5 percent, and in some instances we are being forced to house two inmates in cells barely adequate for one. Overcrowding is even worse in our county jails where the population increased from 7,100 to 8,700 in the 12 months ending March 31, 1981.

In April of this year, a court ordered the Philadelphia County prison system to reduce its population from 2,900 to 2,190, so as to relieve overcrowded conditions. Approximately 200 of these inmates are being transferred to State facilities, while many others may have to be released to the streets.

Our studies indicate that the rise in inmate population is escalating, and will continue, at least for the next few years. In response to the public outcry against crime, judges are sentencing more people to prison. Furthermore, sentence length is increasing.

During the 12 months ending March 31, 1981, the number of people sent to State institutions increased by 17 percent. For the first quarter of this year, the increase was 25 percent.

The average time served for individuals released from these institutions increased from 29 months in 1976 to 33 months in 1980.

It is apparent that the public mood demands increasingly stiff sentences. The Pennsylvania Legislature recently rejected a plan for uniform sentencing practices. Despite the fact that it would have provided for generally longer sentences, this plan was rejected because it was too lenient.

Our legislature is now considering several mandatory sentencing proposals, all of which would increase inmate population. It is apparent that the only question now is which of these proposals will pass.

Governor Thornburgh has proposed changes in sentencing laws combined with the elimination of parole. His proposal, which I

expect to see enacted, will require the construction of 2,500 cells. This is in addition to 500 cells presently needed irregardless of any changes in sentencing laws. At today's prices, the total outlay required for this new construction would be \$162 million.

The problem of overcrowding is exacerbated by the age and condition of America's prisons. Historically, Federal construction assistance has focused on such items as schools, highways, hospitals, airports, and sewage treatment facilities. While these are all noble endeavors, we can no longer overlook the need to modernize our prisons.

Five of Pennsylvania's seven State institutions are over 50 years old. Two of them were constructed in the 19th century. The situation is similar at the county level. Of 68 county jails, 45 are over 50 years old, and 26 are over 100 years old.

Although every reasonable effort has been made to maintain these facilities, they are simply inadequate by modern standards. Common shortcomings include poor ventilation, inadequate lighting, lack of space, deteriorated utilities, and high maintenance costs.

In many jurisdictions, conditions have deteriorated to a point where the judicial system felt it necessary to intervene. When this occurs, the community is limited in the extent to which it can use incarceration as a means of protecting itself from criminals.

Given the fact that there are literally hundreds of lawsuits in process alleging inhumane conditions, and given the nationwide increase in the number of inmates, I anticipate that we will see more judicial intervention.

If the public and its elected representatives continue to demand the increased use of incarceration, then moneys for new construction must be provided. This is necessary not only for the humane treatment of inmates, but also for the safety of those who work in our prisons. Overcrowding has long been established as a factor which contributes to inmate violence.

Again, thank you for the opportunity to present my views, and I will be happy to answer any questions you might have.

Senator GRASSLEY. Is your State using the Cherry Hill facility?

Commissioner MARKS. No; that facility was closed in 1970.

Senator GRASSLEY. It is still closed?

Commissioner MARKS. It is closed, and it has deteriorated to the point where it is just not usable.

[Prepared statement of Commissioner Marks follows:]

PREPARED STATEMENT OF RONALD J. MARKS

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE, I APPRECIATE THIS OPPORTUNITY TO DISCUSS THE PRESSING NEED FOR NEW PRISON CONSTRUCTION. ALTHOUGH MY TESTIMONY WILL DEAL PRIMARILY WITH PENNSYLVANIA, IT IS APPARENT FROM NATIONAL SURVEYS THAT OUR CIRCUMSTANCES ARE REPRESENTATIVE OF A NATIONWIDE TREND. THE NATION'S PRISON POPULATION HAS INCREASED EVERY YEAR SINCE 1969 AND OVER 60 PERCENT OF ALL PRISONERS IN AMERICA SHARE LIVING QUARTERS WITH ONE OR MORE INMATES.

THE COMMONWEALTH OF PENNSYLVANIA OPERATES SEVEN STATE CORRECTIONAL INSTITUTIONS WHICH HOUSE OFFENDERS WITH MAXIMUM SENTENCES OF TWO YEARS OR MORE. WE ALSO OPERATE TWO REGIONAL CORRECTIONAL FACILITIES FOR SHORT-TERM OFFENDERS. IN ADDITION, PENNSYLVANIA HAS 68 COUNTY JAILS WHICH HOUSE SHORT-TERM OFFENDERS AND DETENTIONERS. DURING THE PAST 12 MONTHS, THE POPULATION OF COMMONWEALTH-RUN INSTITUTIONS HAS INCREASED BY 7.5 PERCENT; AND IN SOME INSTANCES, WE ARE BEING FORCED TO HOUSE TWO INMATES IN CELLS BARELY ADEQUATE FOR ONE. OVERCROWDING IS EVEN WORSE IN OUR COUNTY JAILS WHERE THE POPULATION INCREASED FROM 7,100 TO 8,700 IN THE 12 MONTHS ENDING MARCH 31, 1981.

IN APRIL OF THIS YEAR, A COURT ORDERED THE PHILADELPHIA COUNTY PRISON SYSTEM TO REDUCE ITS POPULATION FROM 2,900 TO 2,190 SO AS TO RELIEVE OVERCROWDED CONDITIONS. APPROXIMATELY 200 OF THESE INMATES ARE BEING TRANSFERRED TO STATE FACILITIES WHILE MANY OTHERS MAY HAVE TO BE RELEASED TO THE STREETS.

OUR STUDIES INDICATE THAT THE RISE IN INMATE POPULATION IS ESCALATING AND WILL CONTINUE AT LEAST FOR THE NEXT FEW YEARS. IN

RESPONSE TO THE PUBLIC OUTCRY AGAINST CRIME, JUDGES ARE SENTENCING MORE PEOPLE TO PRISON. FURTHERMORE, SENTENCE LENGTH IS INCREASING. DURING THE 12 MONTHS ENDING MARCH 31, 1981, THE NUMBER OF PEOPLE SENT TO STATE INSTITUTIONS INCREASED BY 17 PERCENT. FOR THE FIRST QUARTER OF THIS YEAR, THE INCREASE WAS 25 PERCENT. THE AVERAGE TIME SERVED FOR INDIVIDUALS RELEASED FROM THESE INSTITUTIONS INCREASED FROM 29 MONTHS IN 1976 TO 33 MONTHS IN 1980.

IT IS APPARENT THAT THE PUBLIC MOOD DEMANDS INCREASINGLY STIFF SENTENCES. THE PENNSYLVANIA LEGISLATURE RECENTLY REJECTED A PLAN FOR UNIFORM SENTENCING PRACTICES. DESPITE THE FACT THAT IT WOULD HAVE PROVIDED FOR GENERALLY LONGER SENTENCES, THIS PLAN WAS REJECTED BECAUSE IT WAS "TOO LENIENT." OUR LEGISLATURE IS NOW CONSIDERING SEVERAL MANDATORY SENTENCING PROPOSALS, ALL OF WHICH WOULD INCREASE INMATE POPULATION. IT IS APPARENT THAT THE ONLY QUESTION NOW IS WHICH OF THESE PROPOSALS WILL PASS.

GOVERNOR THORNBURGH HAS PROPOSED CHANGES IN SENTENCING LAWS COMBINED WITH THE ELIMINATION OF PAROLE. HIS PROPOSAL, WHICH I EXPECT TO SEE ENACTED, WILL REQUIRE THE CONSTRUCTION OF 2,500 CELLS. THIS IS IN ADDITION TO 500 CELLS PRESENTLY NEEDED IRREGARDLESS OF ANY CHANGES IN SENTENCING LAWS. AT TODAY'S PRICES, THE TOTAL OUTLAY REQUIRED FOR THIS NEW CONSTRUCTION WOULD BE \$162 MILLION.

THE PROBLEM OF OVERCROWDING IS EXACERBATED BY THE AGE AND CONDITION OF AMERICA'S PRISONS. HISTORICALLY, FEDERAL CONSTRUCTION ASSISTANCE HAS FOCUSED ON SUCH ITEMS AS SCHOOLS, HIGHWAYS, HOSPITALS, AIRPORTS, AND SEWAGE TREATMENT FACILITIES. WHILE THESE ARE ALL

NOBLE ENDEAVORS, WE CAN NO LONGER OVERLOOK THE NEED TO MODERNIZE OUR PRISONS.

FIVE OF PENNSYLVANIA'S SEVEN STATE INSTITUTIONS ARE OVER FIFTY YEARS OLD. TWO OF THEM WERE CONSTRUCTED IN THE 19TH CENTURY. THE SITUATION IS SIMILAR AT THE COUNTY LEVEL. OF 68 COUNTY JAILS, 45 ARE OVER FIFTY YEARS OLD AND 26 ARE OVER 100 YEARS OLD. ALTHOUGH EVERY REASONABLE EFFORT HAS BEEN MADE TO MAINTAIN THESE FACILITIES, THEY ARE SIMPLY INADEQUATE BY MODERN STANDARDS. COMMON SHORTCOMINGS INCLUDE POOR VENTILATION, INADEQUATE LIGHTING, LACK OF SPACE, DETERIORATED UTILITIES, AND HIGH MAINTENANCE COSTS.

IN MANY JURISDICTIONS, CONDITIONS HAVE DETERIORATED TO A POINT WHERE THE JUDICIAL SYSTEM FELT IT NECESSARY TO INTERVENE. WHEN THIS OCCURS, A COMMUNITY IS LIMITED IN THE EXTENT TO WHICH IT CAN USE INCARCERATION AS A MEANS OF PROTECTING ITSELF FROM CRIMINALS. GIVEN THE FACT THAT THERE ARE LITERALLY HUNDREDS OF LAWSUITS IN PROCESS ALLEDGING INHUMANE CONDITIONS AND GIVEN THE NATIONWIDE INCREASE IN THE NUMBER OF INMATES, I ANTICIPATE THAT WE WILL SEE MORE JUDICIAL INTERVENTION. IF THE PUBLIC AND ITS ELECTED REPRESENTATIVES CONTINUE TO DEMAND THE INCREASED USE OF INCARCERATION, THEN MONIES FOR NEW CONSTRUCTION MUST BE PROVIDED. THIS IS NECESSARY NOT ONLY FOR THE HUMANE TREATMENT OF INMATES, BUT ALSO FOR THE SAFETY OF THOSE WHO WORK IN OUR PRISONS. OVERCROWDING HAS LONG BEEN ESTABLISHED AS A FACTOR WHICH CONTRIBUTES TO INMATE VIOLENCE.

AGAIN, THANK YOU FOR THE OPPORTUNITY TO PRESENT MY VIEWS, AND I WILL BE HAPPY TO ANSWER ANY QUESTIONS YOU MIGHT HAVE.

Senator GRASSLEY. I would like to go now to Mr. McCoy.

**STATEMENT OF W. JOSEPH MCCOY, COMMISSIONER,
DEPARTMENT OF CORRECTIONS, WEST VIRGINIA**

Commissioner McCoy. Thank you, Senator.

West Virginia is somewhat different from the other States in some respects. First of all, we are one of the few States that are not under a Federal court order, although we believe that that is coming. Also, we are one of the few States that does not have overcrowding in our correctional facilities yet. However, like the other States, West Virginia does, in fact, have correctional institutions at the State level and at the county level that are seriously dilapidated.

It is particularly frustrating for corrections administrators in West Virginia, for our Governor, and also for the legislature, who have been working very hard during the past 3 years to upgrade corrections in West Virginia. For example, we have brought our correctional officers from 41st in pay up to 34th. We have trained personnel now, and the legislature and the Governor have made tremendous commitments.

Our major problem, however, is in fact the dilapidated condition of our institutions.

We have essentially 11 institutions, most of those are historical anachronisms, best characterized by our State prison at Moundsville, which is over 116 years old.

Traditionally in corrections, it seems the scarce resources that were available have been allocated for operational purposes, and very seldom do we have sufficient moneys then available for the capital improvements that are necessary to maintain these facilities and to upgrade.

As a consequence, in West Virginia, even though we are not under court order, we have almost 200 suits pending against us by our adult inmates, and most of those suits are alleging violations that fall under the category of conditions of confinement violations—cell size, fire safety codes.

Therefore, we have a crisis in West Virginia. We do not have the resources available, and we certainly hope that the Federal Government will take that into consideration, and that this bill will be passed so that we can continue to upgrade corrections in West Virginia and meet all constitutionally mandated requirements for our inmates.

Thank you, sir.

[Prepared statement of Mr. McCoy follows:]

PREPARED REMARKS

W. JOSEPH MC COY, COMMISSIONER

WEST VIRGINIA DEPARTMENT OF CORRECTIONS

Unfortunately there would probably be no danger in assuming that much of the public, and perhaps even many involved in national criminal justice concerns, have very little knowledge of corrections conditions or needs in West Virginia. This fact may be considered in a positive light in that it obviously means that the storms of controversy which have all too regularly descended on corrections systems in so many other states have by passed West Virginia. Although this is true to a large extent, due to the progressive attitude of the Rockefeller administration, it may lead one to assume that there are no problems; there are no needs. This would indeed be a mistaken premise upon which to make any judgements.

West Virginia, although not unique, is certainly quite different from most of the other 49 state systems. With a state population under the 2 million mark, the number of persons supervised by the Department of Corrections is correspondingly small, 2100 juvenile and adult felons. Although there are only two adult male, one adult female, one young adult male, four juvenile and three adult work release facilities, the system is not now faced with overcrowded conditions. As we move into the eighties, however, it does not take a crystalball to foresee a time when increasing crime rates, more conservative judicial philosophies, experiments in determinate sentencing, and automatic five year sentences for use of a handgun in the commission of a felony, will result in institutional populations significantly larger than those which now exist. As the physical limits of West Virginia's institutions are literally carved in stone, and as the present population is even now 90% of projected capacity, the fate of so many of our sister states can be seen in our own future.

The West Virginia Department of Corrections has experienced significant progress in numerous areas during the past four years, under the leadership of Governor Rockefeller and with the creative support of the state legislature. Dedicated to the principals of professionalism, a mandatory correctional officer training program has been put in place to upgrade the awareness, performance, and responsibility of the operational staff. In an effort to properly and adequately reward these officers

and to attract new officers of high potential, the administration has achieved pay improvements of 51%. The results of this upgrading of the Department of Corrections from the ground level can be seen in phenomenal improvements in escape rates, greater tranquility within the institutions, a better chance of maintaining personal safety and integrity for those in our custody, and a growing sense of career commitment by all employees. Coincidentally, and certainly in part because of these many efforts, the Department of Corrections in West Virginia is not now under any form of Court order.

Despite these many advances, the funding that would be necessary to address equally important and more for reaching concerns in the area commonly referred to as conditions of confinement has not been, is not, and may not be available through normal state revenue channels. As noted earlier, West Virginia is a very small state, essentially rural, with limited sources of revenue. One of the major sources, coal, usually producing 500 thousand dollars per day, has recently been cut off by the two month long United Mine Workers strike. Although many of our institutions are dilapidated anachronisms, the maximum security prison was built shortly after the Civil War, the 30 to 50 million dollars it could take to upgrade just this one institution would represent a significant portion of the State's budget for one fiscal year. We are presently facing nearly 200 inmate law suits concerning conditions of confinement, i.e., inadequate cell size, failure to meet the life safety code, etc., but we do so in the sure awareness that although these problems are well recognized, the solutions may be financially beyond the State's grasp.

As Senator Dole's bill is constructed, a Criminal Justice Facilities Administration would be created within the Justice Department to review grant requests and dispense, over a seven year period, some 6.5 billion dollars. This federal aid, on a 75/25 cost sharing basis would be available for award to states which submit a comprehensive seven year plan for construction and modernization of prisons, reformatories, detention centers, courthouse, jails, etc. A somewhat less dramatic, but very important section of the bill would create a clearing house to collect and distribute information on modernization and construction of facilities. This, it itself, could be a great aid in time and financial savings to many states. It is also outlined that prison labor, at prevailing wages should be utilized in any funded renovation or construction.

On behalf of corrections in West Virginia, three major points should be made in reference to Senator Dole's bill. First of all, this state has some experience in the use of inmate labor for building renovation and construction. In general this experience has been a positive one, as the quality of the work tended to be good, the costs involved were comparatively low (inmates are traditionally paid 50 cents per hour for this type of work), and the work experience itself has been beneficial for the inmates involved. Although, we would thus be open to the use of inmate labor in a funded project it must be pointed out that if prevailing wages are paid between one half and two thirds of the grant will disappear in overhead and never show up in the solution of the problem being addressed. Additionally, concern must be shown for state unemployment figures, union interests, and the obvious fact that inmates should not be used in the design or construction of particularly sensitive areas of institutions it is hoped will be secure. We therefore cannot support certain aspects of this bill as it applies to these points.

Secondly, we are in agreement with Director Hal Farrier of Iowa in that a funding mechanism of 50/50 might result in critical needs being addressed while discouraging the occasional temptation to engage in overbuilding. This could also create a legislative atmosphere in which greater evaluation and participation in the problem solving process could be encouraged.

Finally, we thoroughly agree with the basic philosophic concept which precipitated the formulation of this bill. It cannot be denied that the federal government has a positive responsibility in providing guidance and support to the States in the area of facilities development of modern correctional standards, and through its courts it is the final arbiter of conformity to these standards.

The West Virginia Department of Corrections is firmly in support of Senator Robert Dole's Criminal Justice Construction Reform Act, with certain modifications as noted. We are fast approaching a crisis situation in this state, just slightly behind the schedule of our sister states, and only fast, imaginative and creative approaches to our problems, as would be possible under a form of this bill, might save us.

Senator GRASSLEY. Thank you.

Now I would like to ask Mr. Britton, the last member of this panel, to give his testimony.

**STATEMENT OF ROBERT G. BRITTON, COMMISSIONER, STATE
DEPARTMENT OF CORRECTIONS, ALABAMA**

Commissioner BRITTON. Thank you, Senator Grassley.

I appreciate the opportunity to speak today. I would like to apologize for not having any written material, but upon returning to Alabama, I will submit a written document to you.

COURT INTERVENTION IN ALABAMA CORRECTIONS

Alabama has problems very similar to those of the other States you have heard from today. I think we kind of kicked off the problems many years ago.

Back in 1972, Judge Johnson had some court orders concerning the medical attention of inmates. In 1976, probably the most sweeping court order that has ever existed in corrections, it dealt with all areas of corrections, housing, food, medical attention, the whole gamut.

We have strived to make much improvement in the system in the last 2 years, and we have made a lot of progress, but one of our problems exists today that we seem to need great assistance with, which I think the S. 186 bill will assist the State of Alabama very much in this problem, because without some help I don't know where the answer is going to come from.

I have 15 different court orders existing in my State. Judge Johnson's court order has set quotas in each one of our institutions where we cannot exceed that number. I have 14 other court orders for county jails by the Federal judges that say I must take those inmates as State prisoners from most county jails. So we play musical chairs every morning, trying to move people around, to answer these court orders.

I personally have been found in contempt of court twice in my 10 years as commissioner of the department of corrections. I don't care for this professionally or in any other way.

NEED FOR FUNDING TO CONSTRUCT ADDITIONAL PRISONS

It is a very difficult problem because we do not appropriate money, we do not have the key to the front door of the prison or the back door, we have no say so as to who comes in and who goes, but we are still faced with the problem.

I realize that the State of Alabama should have been building in these many years, and I am happy to say that I am very gratified that the legislature will be giving the department of corrections \$45 million in capital outlay money today. This came from some oil lease money. The State leased out some land in Mobile, in the bay, for oil purposes, and so we are getting some of this money for this problem.

Even though the State should have been building prisons through these years, and has not, I think by this act of the legislature that we are starting to solve our problem of overcrowding in county jails in the State of Alabama but, as I said earlier, we do

need additional assistance because we are talking about an astronomical amount of money.

We have a plan at the present time with the \$45 million to eliminate State prisoners from county jails, and nothing for the future at all. It would just take care of the present number. I have 1,500 inmates.

RAMIFICATIONS OF OVERCROWDED PENAL FACILITIES

It is a sad fact that the State of Alabama only pays the counties \$1.75 a day for these inmates, so you can see that we have taken advantage, because of economical problems, of our counties, as it is costing a minimum of \$9 to \$10 a day for these inmates, and the counties are having to pick up the cost.

I think that in our country today people are more concerned about crime than at any time before. Hardly can you begin a conversation that you do not hear about crime and the concern of people about crime. I think it is a perfect time for people who hold office to address this problem.

REQUEST FOR JUDICIARY COMMITTEE'S ASSISTANCE

I would encourage this committee to do everything possible to assist the States and the corrections departments in this problem, because we cannot do it alone. Right now, although we have this money coming in to build institutions for the future, it is almost to the point where there is really no need for law enforcement officers to arrest people, or our courts to convict people, because there is no place for them to go.

COURT INTERVENTION TO RELIEVE OVERCROWDING

There is a very real possibility, in the next 2 to 3 weeks, that the courts in Alabama are going to release some 750 to 1,000 inmates on the streets because of our court orders, and the State being given ample time to do away with this problem and has not.

We sometimes are critical of the courts, but I think in our situation in Alabama, the courts have been very fair and have given ample time to correct the situation. We are just a little late getting started, but we are going to cure the problem and do away with it, but we would like any assistance that we could possibly get.

UTILIZATION OF INMATE CONSTRUCTION CREWS

I also agree with the 50-50 match. I think that this would encourage the States not to let someone else take care of the problem. The only difference on that 50 percent match is that I would like to see the States being given some credit for inmate labor involved in the construction of these prisons.

I think this would encourage the State prisons to have inmate labor construction crews, because I don't think there is any type of vocational training in our correction systems today that will match what inmates can learn in construction, where they can become taxpayers instead of a burden on taxpayers.

I appreciate the opportunity to speak to you, and I will forward some written documents to you.

[Aforementioned document follows:]



STATE OF ALABAMA

BOARD OF CORRECTIONS

R. G. BRITTON
Commissioner

MONTGOMERY, ALABAMA 36130

FOR JAMES
P. ...

May 26, 1981

M E M O R A N D U M

TO : Senate Judiciary Committee

FROM : R. G. Britton, Commissioner

SUBJECT : Senate Bill 186

Please receive my comments concerning Senate Bill 186 which authorizes federal assistance for prison construction to state criminal justice systems. I appreciate the opportunity to share my thoughts with you.

The most serious problem facing the Alabama Department of Corrections today is insufficient inmate bedspace within the state penal system. As a result, county jails are dangerously overcrowded with state inmates who are awaiting transfer into our state prisons. This critical situation is aggravated by a number of significant factors.

Specifically, the Department of Corrections must comply with federal court orders which prohibit the housing of more inmates in state penal institutions than these facilities are designed to hold. We must simultaneously comply with numerous county court orders requiring that we immediately decrease the backlog of state inmates in various county jails. Our ability to solve the overcrowding problem is additionally hampered by the trend toward lengthier sentences for law violators and more strict probation and parole laws.

Overcrowded penal facilities are not peculiar to Alabama.

MEMO - Senate Judiciary Committee
May 26, 1981
PAGE TWO

The majority of our states face this critical problem and, like Alabama, need federal assistance for construction of additional prisons to relieve overcrowded conditions. It is the federal courts which have ordered correctional agencies across the country to provide sufficient inmate bedspace, and federal monetary assistance is needed to comply with the federal mandates.

I cannot overemphasize the importance of relieving overcrowding of county jails. County facilities are not equipped to house an excessive number of inmates. They are not as secure as state institutions. They are inadequately staffed, old, and in need of repair. In these jails, hardened criminals are mixed with first offenders, and few, if any, rehabilitative programs are offered. Inmates are crowded together. The situation is grave and volatile. Alabama's correctional system and other states' penal systems have not received sufficient funding from the state legislatures to address the overcrowding problem. We must have federal assistance.

I respectfully suggest that fifty percent (50%) of construction funds be provided federally and that these monies be matched by a fifty percent (50%) contribution from any state receiving monetary assistance for prison construction. This 50/50 match, as opposed to a 90/10 or 60/40 match, will permit a larger number of states to participate in the prison construction program.

Senate Bill 186 is an important step toward solving overcrowded prison and jail conditions. Construction of additional facilities will provide more humane, rehabilitative, and hopeful conditions for prisoners and a safer environment for all Americans. I strongly endorse this bill and urge its swift passage.

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Senator GRASSLEY. The last point that you just made, Mr. Britton, the bill does provide that there would be credit given to the States for prison labor, but there would be a prevailing wage required. Let me say that this is excluded from Davis-Bacon. It does not fit within the applicability of Davis-Bacon.

There is another standard, and I am not prepared to say what that is, but at least you would have to be required to pay the prevailing wage of that labor, but you would be given that credit.

I also was negligent, when I introduced you Mr. Britton, to extend to you the welcome of your two Senators, who are members of this subcommittee, your senior Senator, Senator Heflin, and your junior Senator, Senator Denton, who would like to have me extend their welcome to you.

Mr. McCoy, I was equally negligent in extending a welcome to you from a colleague on our committee, the Senate minority leader, Senator Robert Byrd.

Also previously, to Mr. Denton, who may be gone now, Senator Metzenbaum, his Senator, is also a member of this committee and asked me to extend a welcome to Mr. Denton from Ohio.

Counsel has a question or two.

Mr. VELDE. Mr. Reed you mentioned cooperation between yourself and Mr. Carlson of the Bureau of Prisons, and them making available the former Federal facility at McNeil Island to you.

Is it not really a two-way street; does not the State of Washington also extend use of its facilities for Federal arrestees and detainees in the northwestern part of the country?

Mr. REED. Yes, we have in the past and will continue in the future to extend the courtesies of the house to the Federal marshals and to the Bureau of Prisons.

I might add, Senator, that I have enjoyed this kind of relationship in all the States where I have been.

Mr. VELDE. As I understand it, there are a number of jurisdictions now where availability of State and local space for Federal detainees is becoming quite scarce, and in some cases just not available at all.

Mr. REED. That is most true. The marshals are having to travel long distances in order to find county jails in which to house the detainees. It has become a very serious problem for them. The county jails simply do not have the space.

Mr. VELDE. The bill does not contain a provision which would authorize access by the Federal system if there are Federal funds involved. Would there be objection to that kind of provision?

Mr. REED. I am always reluctant to have hard mandating. As far as writing this in as an expectation, it certainly would not offend me. I think my peers would be responsive to that.

I know when we started negotiating for McNeil Island, there was not a moment's hesitation on my part to say that we would be responsive to the marshal's detainees and to the Federal Bureau of Prisons.

Mr. VELDE. Thank you, Mr. Chairman.

Senator GRASSLEY. I also want to say to Mr. Marks that Senator Specter is a member of this committee, and I also want to extend a welcome from him to you.

I thank each and everyone of you for your participation in this panel. As I told the previous panel, you may receive, for the record, some questions from other members of the committee. We would appreciate it if you would respond to those in writing for the record.

Thank you all very much.

At this time, I would like to call panel V, Anthony P. Travisono, who I know well, executive director of the American Correctional Association; Frederic Moyer, president of Moyer Associates, Criminal Justice Planners and Architects; Ferris E. Lucas, executive director, National Sheriffs' Association; and Richard B. Geltman, National Criminal Justice Association.

I would like to recognize, even though he is no longer a constituent of mine, at one time, Tony, you were a professional in the State of Iowa, director of the El Doro Boys Training School, and later assistant director of corrections for the department of social services.

I knew you well then, you were appreciated by the State legislature, and you were one of the first really true professionals that the State of Iowa hired a good number of years ago, when the board of control decided that they had to get people who were experts in these areas to bring about some needed changes in our State. You did, and many of the changes you made are still being followed by the existing department of social services, which was a follow on of the board of control.

Tony, would you like to be the first?

STATEMENT OF ANTHONY P. TRAVISONO, EXECUTIVE DIRECTOR, AMERICAN CORRECTIONAL ASSOCIATION

Mr. TRAVISONO. Thank you, Senator Grassley. It is indeed a pleasure to sit before you this morning. I have not seen you in quite some time.

The American Correctional Association is that group that tries to represent the correctional constituents throughout the United States.

I will not try to repeat anything that was said this morning because of the time limitation, but we are in a crisis in our great country, and there is a feeling that the numbers that you have listened to this morning will not be decreased in the next few years, and perhaps not ever. We are not sure of just where our country is going to go.

One of our colleagues sometime ago said that by the year 2000 we may have half the people of the United States supervising the other half of the people of the United States. It appears, from the numbers that are being sent to correctional institutions, that there is no lack of clientele.

This is not a strange momentary phase in our cultural pattern of incarceration. It has been going on for some time. When we had the tremendous cooperation of LEAA during the mid-1970's, most of that legislation was to promote the concept of alternatives in corrections. Very little of the moneys that were available were for major institutions. I think that part of the process now is that we had a lack of concern for several years, so that now we seem to be in a very serious crunch.

I want you to know that most of the states, many of whom were represented this morning are spending exorbitant amounts of money trying to catch up. Four billion dollars are being expended either through State or local resources. Much of this is for renovation, and some of it is for new institutions.

The intervention of the court and the intervention of people saying that we are not taking our people off the streets and trying to make a safe and sane ordered society is causing a great deal of concern.

I think the committee knows that the numbers are going to be with us. I think everyone fully recognizes that. I think you also recognize that the clearance rate of crime is not the highest that it would be or could be. If police were able to apprehend and prosecute at a higher rate, we would be in more serious trouble.

The national clearing rate is about 20-odd percent of all crimes, or the solutions to those, and about only 5 percent of those are convicted, and thereby come into major institutions. If that number were just up by 1 or 2 percentage points, without anything else happening, we would continue to be inundated with the numbers of offenders.

My colleagues this morning and others were not trying to impress the committee that we need something that we don't need, because the resources are going to be more difficult to come by.

What LEAA started was a Federal/State/local partnership, and although many billions of dollars were dispensed during that period, it was only a beginning. It seems, on the one hand, rather ironic that the previous Administration and others have felt that perhaps that helping partnership no longer needs to exist.

I would like to implore you as a person, and as a Senator with the great respect of your colleagues, that now is not the time to reduce the amount of Federal participation for no other reason than the perception. I think Mr. Britton said it earlier, the perception is that the Federal Government at this point in its development no longer cares about what happens to the States or locality as far as crime control is concerned.

I don't think that it is an accurate perception, but it can be looked upon as that with the demise of LEAA, and no other group except a small office of the National Institute of Corrections which has done a yeoman's job in the past 3 or 4 years in trying to give technical assistance and training programs to States and locales.

I would like to conclude by just showing you a chart, Senator, which I think fairly depicts the problem we have today, and where we may be going. I would like this chart to be placed up, and comment from it.

What we tried to do is show you a chart that we developed from 1904, when we had our first statistics given to us, and then relate it to the population of our country from the census of 1910 all the way up to 1980, and the prison population during those decades, the increase in the population of the United States during that time, and then the rate of incarceration which goes along with the increase.

You can see from one perspective that this line from 1910 or so continues to go this way, except for three distinct times in our history, which is a 70-year history. We can project what the future

might be, but we don't know what the future will be. I think we can learn from history that the only three times that there has been a dip in the population in correctional institutions was during the three wars in which we participated—World War II, Korea, and Vietnam.

The way we like to explain is that what we do during wars is take out from our midst those people at risk, the 18 to 25 year olds, which give the correctional systems in this country most of our clients at a time when they are not doing something constructive. We have yet to be able after a war to solve the problem of idleness, or lack of employment during peacetime.

It shows here very vividly that as soon as the war is over, the inmate population continues to grow. Korea was a short war and did not really make a big difference, but Vietnam War took millions of people from our population.

You can see a very serious dip in the 1970's. As soon as the war was over and the men were brought back, the line almost goes straight up, and we are projecting that it might continue to go that way unless we can solve the problem of employment in our cities and inner-cities, what to do with the young man who has no means of employment and feeling of pride.

Senator GRASSLEY. Tony, in the Vietnam War, that was the time frame, if my recollection is right, there was some change in the philosophy of incarceration, a little less feeling toward punishment and a little more feeling toward rehabilitation. It may still be the philosophy, but it seems to me that it really hit its peak in our State at about that time.

I wonder if this rehabilitation philosophy could have had something to do with the decline also, because that seems to be very dramatic over a longer period of time.

Mr. TRAVISON. I think it had a great deal to do with the social pattern that we had in those days, but we also had well over a couple of million people out of our population in that period of time, but measure which one was the most important, I can't do that at this time.

Senator GRASSLEY. But that would have had more of an impact, we will say, in the Vietnam downturn, or the World War II or the Korean War downturn; is that right? And maybe it would have been responsible for it being a little longer period of time.

Mr. TRAVISONO. Another comment I would like to make in closing, Senator, is that although this represents only prison populations, Federal and State, our colleagues who run the jail systems tell us that the future of that is also in tremendous jeopardy, and that we have well in excess, in our country right now, of 7,000 State inmates who are backed up in county jails. When a county jail gets backed up, there is very little chance for them to do anything about it.

There is a war, so to speak, going on between State and local officials trying to come to grips with who has the responsibility to service this number. At this point, we are in crisis, and I am hoping that you will be able to move this bill forward.

I may add one more thing. Last week, I believe it was, the Department of Defense or someone said that there was going to be

a hit list of military bases by the Department of Defense, which then said there was no such hit list.

I would like to suggest that if there is such a hit list, and it does become public, that corrections officials have the opportunity to have first call at some of those abandoned bases, whether they be Navy, Air Force, or Marine bases, throughout the country for immediate help where there are finances available in the various States to do something, but they can't find a location to do anything about it.

I would appreciate your efforts on that also.

Senator GRASSLEY. For what it is worth, Tony, in regard to the legislation, it does provide for the immediate availability to States of surplus land and equipment to facilitate the goals set by the legislation.

Mr. TRAVISONO. I would hope that you might be willing to perhaps extract that portion of it in the event that the totality of the bill may not be given great credence in the next few months because of the high-price tag going along with the bill.

[Prepared statement of Mr. Travisono follows:]

STATEMENT OF

ANTHONY P. TRAVISONO
EXECUTIVE DIRECTOR
AMERICAN CORRECTIONAL ASSOCIATION

Mr. Chairman, Members of the Judiciary Subcommittee on Criminal Law, I am Anthony P. Travisono, Executive Director of the American Correctional Association (ACA), and I am here today on behalf of the membership of the ACA to testify in support of S. 186, The Criminal Justice Construction Reform Act, introduced by Senator Robert Dole.

Briefly, the ACA was founded in 1870 and our first President was Rutherford B. Hayes, former Governor of the State of Ohio and the 19th President of the United States (1877-81). Today, the ACA has over 10,000 professional members representing such diverse areas of corrections as: state, local and territorial correctional agencies, institutions, jails, pre-trial programs and agencies, as well as federal probation, parole and institutional agencies.

Among the most significant purposes of the Association are to exert a positive influence on the shaping of national correctional policy and promoting the professional development of persons working in all aspects of corrections.

The ACA is proud of the many years of endeavor it has contributed in developing correctional standards which has led to accreditation for many agencies in corrections. The great majority of these standards were adopted by the Attorney General and the Department of Justice on December 16, 1980 and made mandatory for the Federal Prison System. Also Attorney General Smith, in his statement before the House

Judiciary Committee concerning Department of Justice authorization on March 11, 1981, stated: "For the (corrections) building and facilities program, increases are requested to begin implementing both departmental and ACA standards..." At the state and local level these minimum constitutional standards are voluntary. The standards which must be met to receive accreditation are the only comprehensive national standards developed for all components of the correctional system. (There are 195 community residential standards, 208 probation and parole standards, and 465 institution standards.)

There are currently 585 correctional facilities in the accreditation process in this country and in Canada. One hundred and twenty-four (124) corrections programs have been accredited since the implementation of the voluntary process in 1978. Our neighbor in Canada has accepted our correctional standards as their own and eight Canadian institutions and agencies have received accreditation.

The Commission on Accreditation for Corrections is a private, nonprofit organization, which has been primarily funded by the Department of Justice, Law Enforcement Assistance Administration, and fees paid by agencies seeking accreditation.

After hearing testimony of various state directors of corrections, I am sure the Committee is well aware of the present condition of our state and local correctional facilities. There is a crisis in corrections in this country. The current crisis has been building since the middle 1970s. The grave problems of overcrowding which presently plague almost all correctional systems in the Nation appears to be increasing.

The attached prison population graph indicates the major decreases in the prison population that occurred simultaneous to American participation in World War II, Korea and Vietnam. This graph clearly illustrates that the population problems of the Nation's prisons cannot be defined solely in terms of the prison system itself.

What is the solution to our problem? What role should the federal government play in resolving the correctional dilemma? Let's not continue to play games as we have in the recent past. The Law Enforcement Assistance Administration (LEAA) would not spend money on institutions because the legislation would not allow it. Alternatives were stressed but populations continued to go sky high. Legal service lawyers had a field day taking correctional agencies to federal court because they considered it a fertile field to pursue perceived abuses of the United States Constitution. Almost by a national design, state after state and county after county were pulled to court to stand a test for which there was no primer. Each attorney and each judge prescribed what prisons should be and permanently cast their designs into law.

Today in 1981, states in which there are existing court decrees, or pending litigation, involving the entire state prison system or the major institutions in the state and which deal with overcrowding and/or the total conditions of confinement (does not include jails except for the District of Columbia) number 39 and are: Alabama, Arizona, Arkansas, California, Colorado, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, Missouri, Nevada, New Hampshire, New Mexico, North Carolina, Ohio, Oklahoma, Oregon, Rhode Island, South Carolina, Tennessee, Texas, Utah, Vermont,

Virginia, Washington, Wisconsin, Wyoming, District of Columbia, Puerto Rico, and Virgin Islands.

Judicial intervention on the state level has been accomplished by an increased interest at the federal level. For example, on March 2, 1981, the Supreme Court began arguments on Chapman v. Rhodes, one of the most important and far-reaching prisoners' rights issues to reach the Supreme Court in many years. The question before the Court is whether the Constitution permits two prisoners to be housed in a cell designed for only one prisoner. The Supreme Court ruling in this Ohio case (Lucasville Prison) will have immediate national impact on corrections. The Supreme Court is expected to issue a ruling on the case during this term.

Corrections has always been a low priority in budgets at all levels of government. Prisoners do not make good political constituents. We have seen the demise of the LEAA and the OJJDP. We have observed a new Administration trying to understand the problems of increased crime and violence, and it appears there will be major adjustments to what has been a muddled or nonexistent criminal justice policy. However, the capacity in our Nation's prisons and jails to receive increased court-ordered commitments is nonexistent. Corrections does not have a say in the number of clients sent for confinement and never has. Decisions are made by the various courts of the land.

For example, an increase in length of stay, from 10 to 12 months, requires a 20 percent facility capacity increase. The same capacity increase is needed for a 20 percent increase in the number of offenders sentenced. A 20 percent increase in the number of sentenced and a two month increase in duration of sentence together could produce a compounding factor of up to 44 percent increase in the present inmate

population. Even without a further increase in crime, if the present clearance rate were increased and greater numbers were sentenced and for longer periods of time, the system would be in total bedlam. However, if there is to be an increase in the apprehension, conviction and incarceration of greater numbers of law violators, then the entire system must progress to meet the increased pressures of increased inmate populations on correctional institutions.

The ACA does not support S. 186 only because it would provide funds to build new facilities. We need as well to upgrade and modernize many of our correctional facilities to provide constitutionally humane custodial environments. We need more and better vocational education and work facilities and programs. We need adequate recreation space. We need modern medical facilities -- and so forth. Some of our older institutions should be demolished and replaced with modern facilities. Since 1968 and \$12 billion of LEAA, only five bastille types have been closed. We must find better ways to classify who goes to what kind of a facility. When possible, community-based correctional alternatives should be the choice of a large number of sentenced inmates; especially the first offender. Restitution and other alternatives to incarceration should be encouraged.

Chief Justice Warren E. Burger released his Year-End Report on December 29, 1980. In the area of criminal justice, Mr. Burger's major focus was on the overcrowded prison conditions that sparked the February 1980 riot in Santa Fe. "What these events reaffirm is that our criminal justice system is in need of fundamental change; specifically, we must focus more attention on the conditions of incarcerated persons." While not going so far as to suggest that the "fundamental change" might be (increased use of alternatives

or increased building of secure facilities), Justice Burger did endorse the use of community services as a condition of probation, and more attention to the employment needs of the ex-offender.

A great deal of national attention is presently focused, and properly so, on the overwhelming increase of crime and violence throughout the land. The Post/ABC telephone poll of 1,205 persons taken just after the President's speech to Congress on February 8, 1981 showed overwhelming public support for the President's economic policy. However, when asked whether they (the public) felt spending for fighting crime should be increased, decreased or left the same, 74.1 percent said they felt it should be increased, 17.9 percent said it should be left the same, and only 5.6 percent said they felt it should be decreased. The public overwhelmingly expects the federal government to do something to resolve the ever-increasing incidence of violent crime.

According to the Department of Justice, violent crime has increased 59 percent since 1970. Violent crime increased 11 percent from 1978-79 alone, and preliminary figures indicate it grew another 10 percent in 1980. These figures are indeed shocking to us all. This alarming and continuous increase in the commission of violent crime raised a serious question as to whether the federal government is doing enough to meet its obligations to insure domestic tranquility. If the states and local governments have to follow the Constitution, then the federal government must do so also. The fight against crime is as much a part of our national defense as the Pentagon budget. As a Nation, we spend billions for defense against foreign aggression, and we must pay more similar attention to defense against our own internal aggressive and social disintegration. It will cost!

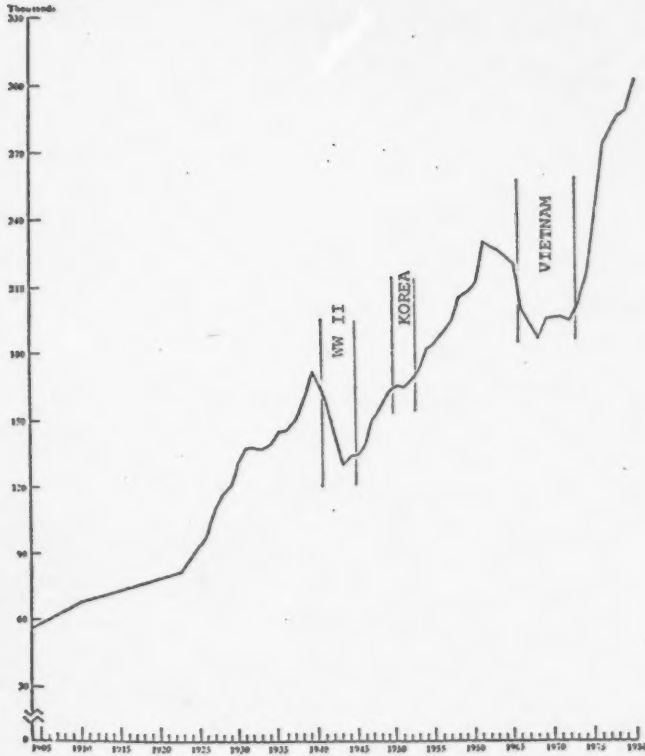
S. 186 is a step in the direction of improving the justice system in a way that will protect society from violent criminals by providing proper facilities which will help shape the character and behavioral habits of those placed in confinement.

The ACA has been actively involved in the evolution of this legislation. We were invited by Senator Dole to comment on the bill on October 23, 1980. At this point in the record, I would ask permission to include the ACA comments on S. 186 which were submitted to Senator Dole and members of the Judiciary staff on November 6, 1980. The points we made then are still valid. We wish to re-emphasize the importance of providing adequate training facilities for both inmates and correctional staff personnel. Corrections is the only component of the criminal justice system in the United States which does not have a national training academy. We believe such an institution to be desirable and necessary in order to provide the level of training necessary to meet the ever-increasing and sophisticated needs of the corrections profession.

I thank the Committee for this opportunity to share with you our position on this legislation and urge your favorable consideration to move S. 186 forward to consideration by the full Senate in this Session of the 97th Congress.

ADULT PRISONERS IN STATE AND FEDERAL INSTITUTIONS 1904 THROUGH 1980 (July 1)

Data for this chart was obtained from the U.S. Department of Justice, Prisoners in State and Federal Institutions on December 31, 1975. Statistics beyond 1975 were collected for this directory from various state departments of corrections and the Federal Bureau of Prisons.



UNITED STATES STATE AND FEDERAL PRISON POPULATION 1910 through 1980 RATE OF INCARCERATION

<u>YEAR</u>	<u>PRISON POPULATION (ACA Directory)</u>	<u>U.S. POPULATION (U.S. Census Bureau)</u>	<u>RATE OF INCARCERATION per 100,000 POPULATION</u>
1910	66,000	92,228,531	71.56
1920	76,000	106,021,568	71.68
1930	130,000	123,202,660	105.52
1940	166,000	132,165,129	125.60
1950	161,000	151,325,798	106.39
1960	210,000	179,323,175	117.11
1970	195,000	203,211,926	95.96
1980	320,613	226,504,825	141.55

Senator GRASSLEY. At this point, I would like to call on Frederic Moyer, president of Moyer Associates, Criminal Justice Planners and Architects.

First, we have one question from staff.

COMMENDATION OF WITNESS

Mr. VELDE. If I can add a personal note to the introduction, Mr. Chairman.

Mr. Moyer was a distinguished full professor of architecture at the School of Architecture, University of Illinois, and was the director of the National Clearinghouse of Criminal Justice Planning and Architecture there for some 7 or 8 years.

In that capacity, he was involved in providing technical assistance in over 2,500 different instances of State, local, indeed international criminal justice facility planning efforts, not just corrections.

So, Mr. Chairman, we have in our midst a true expert, who not only provided this technical assistance, but who has testified in any number of Federal and State court actions that many of the witnesses here this morning have alluded to.

Senator GRASSLEY. Thank you.

Now, we would like to have you proceed.

STATEMENT OF FREDERIC MOYER, PRESIDENT, MOYER ASSOCIATES, CRIMINAL JUSTICE PLANNERS AND ARCHITECTS

Mr. MOYER. Thank you, Senator.

It is an honor to be here with you. I will try to be brief, as the Chair has requested. I speak from my experience as director of the National Clearinghouse, as Mr. Velde has mentioned, and also in the last 3½ years as a practicing architect and criminal justice planner, involved with the same issues and questions as concerned the clearinghouse.

Yesterday in South Bend, Ind., President Reagan delivered an address in which he stated that for too long the Federal Government has been spending too much attention trying to fix things that are not broken. I would suggest that the criminal justice system and its facilities is not such an area. The facilities indeed are broken, literally broken, throughout the United States.

The facility conditions serve as a symptom of systemic problems in three particular areas. First, there is a symptom of neglect. The fact that decades upon decades have passed without resources having been expended in this area is testimony to the neglect that the system has received.

Second, they are a testimony to the dysfunctioning of the system in many ways, a system which some have called a nonsystem, a fragmented system at the very least, one which has very little informed decisionmaking going on in the routing of people and delivery of services within it.

As other witnesses have already testified, the corrections administrator generally has no control over the front door or the back door, namely, how long people stay and who stays, or what conditions will be available for their accommodation.

Third, the facilities serve as a symptom of failure, a failure not only of those who are incarcerated within them, but of those who are outside.

I would submit that existing facilities tend to perpetuate all three of these areas of deficiency. Statistics can of course be elaborated, and have been, and they are certainly abundantly available to describe the magnitude of the problem which exists nationwide. What is not often described by these numbers is the fact that the problem is increasing enormously on a constant basis.

In my own home State of Illinois, I have heard the director of corrections just this last Friday announce publicly that Illinois has a need for increased bed space which grows at 100 beds a month, and forecast a shortfall in the area of 2,800 beds in the next 4 years, a shortfall which will not be alleviated despite recently allocated capital budgets. As various of the corrections administrators have testified, this problem is one which is of national proportions.

S. 186 CRIMINAL JUSTICE CONSTRUCTION REFORM ACT

Among the features of the S. 186 measure, which I would wish to comment upon specifically and with wholehearted support, the following are included:

First, is the recognition of the need for a multiyear funding program, one which is not subject to the vicissitudes of annual appropriation, action, or even gaining of attention to problems that are of such national magnitude and of such complexity. This is of great importance.

Second, is the advanced practices features be incorporated in the design of facilities. I would like to discuss what might be defined as advanced practices in a later portion of this summary.

Third, is the total system planning which should be strongly emphasized. The bill does indicate that each State will develop its own 7-year plan with annual updating of that plan as conditions and needs change. This is a very important feature.

Emphasis should also be placed within the legislation on regional delivery of services, and certainly multijurisdictional cooperation can be facilitated by a measure such as S. 186. I would suggest will not be found without such a measure.

With respect to the clearinghouse function, which is called for, and I speak here with some reflection on my own experience in initiating and operating the National Clearinghouse for Criminal Justice Planning and Architecture at a prior time, the information transfer function is a very significant one that I would support. The accompanying written statement offers further comment in this area.

The transfer of new information within the field could be facilitated with the sharing between jurisdictions of their successes as well as their failures in order that the mistakes that are made in dealing with new problems are not repeated. Also, where success has been found with a particular problem, it can be shared more widely. The transfer function is a very significant one.

Also, there is a need for the ongoing evaluation of advanced practices concepts. What in fact does define advanced practices? It

meant one thing in the 1700's, and it meant something else in the 1800's, and on into the present, with changing perceptions of problems and solutions.

As my colleagues and I faced the responsibility in 1970 of defining advanced practices, consistent with the congressional mandate which accompanied the part E amendment to the Omnibus Crime Control and Safe Streets Act of 1968, we evaluated the literature in the field. We conducted research to determine what could be defined as the state of the art. We found that it was contained in a book that had been published in 1949 by the Federal Bureau of Prisons, which contained architectural examples from the 1800's. This was being distributed in the 1970's as advanced practices, or at least state-of-the-art literature.

It is observed, therefore, that the definition of advanced practices needs continually to be evaluated and updated. Even that which has evolved in these few recent years which has significantly changed the field of criminal justice architecture should not be firmly implanted as the standard for all time. As experience is gained from the implementation of new concepts continual evaluation and update should follow.

EXISTING CONDITIONS

If I might, I would like to use a few charts to illustrate some of these points.

Senator GRASSLEY. Please do.

Mr. MOYER. I have indicated that criminal justice facilities are indeed broken across the country. This is a riot in Oklahoma in 1973 (fig. 3). The public is also aware and the Congress is aware of the uprising that occurred in New Mexico, and the uprising that occurred at Attica. Perhaps people are less aware of the violence that occurs on a daily basis on various scales in institutions throughout the country.

Evidence of the deficiencies that prevail around the country are perhaps indicated by this map (fig. 1), which illustrates those locations in the country which are presently subject to court orders or facing litigation within Federal courts concerning the overcrowding of State systems. These orders generally address the entirety of the system, or all of its major institutions.

Some 36 States, and this number changes with the passing days and weeks, are involved in litigation. Again, I would offer this as an indication of the national scale of the problem, the national dimension which it has occurred both in urbanized States as well as the more rural States.

The issues with which the courts have been concerned I think should be addressed, so that the public is perhaps aware of the kinds of deficiencies that are being found. The professional standards that have been developed in the field, including, those that were first developed at the Clearinghouse, those advocated by the American Correctional Association, and those published by the National Sheriffs' Association in its monograph on jail architecture, call for single occupancy. In contrast, the typical condition is 2, 4, 6, or 8 inmates in a cell, often 50 and sometimes 100 inmates in a dormitory and more typically larger numbers. This condition

fails to provide for the safety and protection of the individual, nor the security that comes with more supervised accommodations.

In terms of area, the square footage required per inmate by each of the various standards and by the court orders are quite consistent in the range of size which they require. Typically, across the country, at both State and local levels, we find 15 to 20 percent of minimum area actually provided. The standards call very simply for square footage to allow movement, to accommodate activities and the size of people. Yet provided area is often one-fifth of that called for uniformly by standards.

Ventilation in facilities, just the movement of air and the change of air as a health measure is not provided often because of obsolescence in the original design of the facility.

Sanitation facilities, including showers, availability of hot and cold bathing water, et cetera, typically are not present, or heavily overtaxed by the population.

The availability of outside light is typically not found. Instead facilities provide cages that have had walls placed around them and a lack of light is found in the interior. The light by which a person can read either for recreation or in relation to academic or vocational pursuits typically is not found in institutions, and this is simply archaic.

Standards call for the ability to see to the outside and the courts have held that an inmate has a constitutional right to know whether it is daytime or nighttime. This is a very limited sort of expectation. Yet, this is often not provided by the obsolete design of our institution.

Availability of medical treatment, or the access to medical services, is very typically not provided. Over two-thirds of the jails in the country fail to meet anything beyond very minor first aid kinds of treatment capability.

The availability of program space is a notable deficiency. Here the courts have been, in my opinion, quite lenient in requiring only that there must be some program space. The standards, in fact, do not specify how much space. They suggest that enough space be provided to accommodate the facility programs. Typically there is no program space.

Fire exiting and other life safety issues are areas in which increased attention has been focused in recent years with the deaths that have occurred in prison and jail fires in Columbia, Tenn., in Florida, and Danbury, Conn., and various other fires in correctional facilities around the country.

Most of the institutions, I would estimate 99 percent, do not meet the minimum standards today for life safety, the evacuation of people. This jeopardizes the safety of inmates, staff, and visitors. Recent deaths have included people in all three categories.

ADVANCED PRACTICES

In terms of the advanced practices aspect of the S. 186 measure, I would like to suggest that planning is an extremely important part and precondition for the commitment of construction funding.

I would like to suggest to the committee that under the definition of advanced practices, which the S. 186 measure includes, that

the definition should include, prior to the commitment or decision upon construction funding and allocation of construction funds, analysis of the goals of the particular jurisdiction being served, assessment of the kind of problems with which it is dealing, and projection of the demand for services and facilities under alternative policy options.

By such a planning process, the nature and extent of required facilities may be determined.

Such projections of need, undertaken prior to any facility commitments, fully consider alternative policies which would impact facility need. Various alternative programs could clearly reduce requirements for facilities.

On the basis of total system planning, decisionmaking is possible which is more informed and will have more long-lasting validity than crisis planning for criminal justice facilities (see fig. 5).

Consistent with this, this chart (fig. 4) illustrates the impact of decisions at various stages of such a process. It simply suggests that the largest impact is possible at the planning and programing phases, and the ability to impact service delivery begins to diminish as a facility is being designed, and it is reduced to its lowest ebb upon occupancy. In fact, when a jurisdiction is facing renovation, reconstruction, or abandonment of facilities, the extent of functional need may greatly exceed that which the facility will accommodate.

The greatest impact, therefore, is at the planning and programing stage, and I would recommend that the S. 186 bill focus on that, with the advanced practices language which it does contain. I suggest that this could have even further definition. The developmental work of the National Clearinghouse for Criminal Justice Planning and Architecture could provide the basis for this.

One more illustration concerning the relationship between operational and capital costs of programs and facilities (fig. 6). This bar chart illustrates the 30-year life-cycle cost of a correction facility. The capital cost is about 8 percent of the total amount of funds that would be spent with respect to the facility over 30 years. Operating costs comprise approximately 92 percent. This points not only to the need to carefully establish the extent of building need, but also to incorporate advanced practice design concepts in order to minimize long-term operating costs.

One of the points to be made is that with the obsolete facilities that we presently have, there is tremendous inefficiency in the expenditure of a very large amount of money that goes on daily in part because the kind of buildings that we have are inefficient, poorly organized, and inadequate in a variety of ways.

By the same token, the amount of capital resource that is suggested under S. 186 of \$6.5 billion is a very small amount of the funding related to facility operations over a 30-year period.

I would suggest again that through the total system planning process, the extent to which facility requirements can be reduced and capital costs reduced, will have a leverage effect on other costs such as the operating costs that would not be required. While we face a facility crisis that presents conditions throughout the United States which are clearly shocking to the conscience, the need is

also presented to plan new facilities only for those who need them. This should be a part of the definition of advanced practices.

Mr. VELDE. Mr. Moyer, in your chart, have you taken into account the dramatically increased cost of energy in the last 2 or 3 years?

Mr. MOYER. Yes.

Mr. VELDE. I assume that this would have a compounding effect on these numbers.

Mr. MOYER. This is correct. One facility in New Jersey, the Trenton State Prison which was built in 1836, is now in the process of being recycled. The old portions are going to be torn down, and a new facility will be turning over on the same site.

The energy costs of the new building will be 40 percent of the existing physical plant. That is to say there is a 60-percent waste in operating a building that was built in 1836, which houses several thousand inmates. So the new construction will, in fact, through energy cost reduction, achieve a net savings.

Previous reference was made to Clearinghouse technical assistance. Just by way of information, I would point out that this did occur between 1970 and 1977 in a large number of jurisdictions. With the demise of LEAA and, in turn, the cessation of the Clearinghouse, this kind of information transfer model or capability does not presently exist.

We find that the availability of construction information, of planning information, or the experience of one jurisdiction to share with another, is not something which normally occurs within the field, certainly without an established vehicle for it to occur. I say that with all due respect for the excellent efforts of the American Correctional Association, the National Sheriffs' Association, and the National Institute of Corrections.

In many areas, they deal with matters in an outstanding manner, in terms of staff training and many other issues. But in terms of the planning and design issues with which the Clearinghouse dealt, I have not seen a service emerge on the same scale. Yet, I would say that the need for it is probably greater in 1981 than it was even in 1977, which is the termination point of this particular chart.

That interest, I might add, developed on an international scale. The guidelines which were developed by the Clearinghouse staff and its total system planning model attracted the attention of the United Nations, and culminated in the publication of a book by the United Nation which transmitted internationally certain of those concepts that were developed in 1970-71. This is published in London under U.N. auspices. I just mention that to indicate that the work sponsored by the Department of Justice and LEAA has found a receptivity not only in this country but in other countries and has been adapted in their own work.

I would suggest also that the standards that were developed by the Clearinghouse, the very beginning work in contemporary standards, I find to have been incorporated by subsequent standard setting groups—the National Advisory Commission on Criminal Justice Standards and Goals, in its chapter dealing with the planning of new institutions, and the chapter dealing with total system planning and the entire system of service delivery, and also later

by the very important work of the American Correctional Association, work that Mr. Travisono can speak to more directly than I.

The Monograph on Jail Architecture, of the National Sheriff's Association has already been cited. The recently adopted Federal Standards for Prisons and Jails of the Department of Justice also incorporate Clearinghouse recommendations.

I find great consistency between the work of these various groups, which I think is important. I don't see that we have a conflict between the kind of directions that need to be followed to achieve remedies for deficiencies around the country.

I think we find consistency. What we also find is a tremendous lack of resources, and that is a feature of the S. 186, Criminal Justice Construction Reform Act that deserves consideration.

I would suggest once again that we have a system which is indeed broken.

Thank you.

Mr. VELDE. Mr. Moyer, your comment about the consistency of the guidelines or standards, you indicate that applies also to the recently promulgated standards of the Justice Department?

Mr. MOYER. Yes, it does. Again, I understand the Justice Department task force studied the relationship of various standards over a 2-year period to seek resolution of differences between the new Federal standards and others that had been promulgated from various sources.

In my opinion, and I can only offer my own opinion, that resolution did in fact occur, and any differences which now prevail between the various standards are really not of great significance.

Mr. VELDE. Mr. Travisono, would you have a comment with respect to the impact of sentencing reform, and particularly determinate sentencing reform on inmate populations?

Mr. TRAVISONO. I think there is a general feeling and attitude throughout the United States that determinate sentence, as we now have known it to exist in the last couple of years, has aided and abetted the increase in institutional population. I think the first several States that embarked upon this are finding that to be true. I think there are probably 20 to 22 States that are in the process of considering this, however, the first State that abolished parole, which is the State of Maine, is now in the process of reinstituting the parole concept because of the increase inmate population in the Maine institutions.

Mr. VELDE. There are provisions in the Federal Criminal Code which also go in the same direction of determinate sentencing, the Federal Criminal Code reform bills.

Mr. TRAVISONO. That is correct.

Mr. VELDE. Would you confidently predict the same thing will happen if that becomes law?

Mr. TRAVISONO. I have no doubt that that would happen. I am hoping that that concept begins to slow up a little bit, as also with the concept of mandatory sentencing, unless a full impact statement is designed to insure what is going to happen to corrections when these things do take place.

[The prepared statement of Mr. Moyer follows:]

PREPARED STATEMENT OF FREDERIC D. MOYER

Senator Dole, and distinguished Committee members, it is with a great sense of responsibility and appreciation that I respond to the invitation for my testimony on S.186, the Criminal Justice Construction Reform Act. The statement which follows is based upon my experience and observations in several capacities.

First, I have served for several years as a faculty member of a major university, concentrating on the kinds of architectural responses which are appropriate to contemporary social needs. Research pursuits have generated multi-disciplinary collaboration in defining problem areas and articulating directions for solutions. Second, and as a result of this interest, I have served as Director of the National Clearinghouse for Criminal Justice Planning and Architecture which has had a particular focus and impact in the area of criminal justice. This experience, between 1970 and 1977, was supported by the U.S. Department of Justice through the Law Enforcement Assistance Administration. As a result of a very extensive national involvement in the area addressed by S.186, this experience is considered relevant to the measure now proposed. It included an extensive inventory of criminal justice facility conditions nationwide and an exposure to the system processes which impact them and are impacted by them. It has, of necessity, included a focus on system goals, assessment of service delivery needs, and projection of the results which alternative policies would have upon operational and capital resource requirements.

In addition, during the past three and one half years, I have had the opportunity to work with state and local governments throughout the United States as they have sought remedy to the deficiencies recognized by S.186. This particular involvement has included other core staff members of the National Clearinghouse for Criminal Justice Planning and Architecture as we have continued our association and our professional concentration as Moyer Associates Incorporated, Criminal Justice Planners and Architects. For whatever relevance which may be added, I should inform the Committee that I have attained professional architectural registration in more than forty

states and serve as a member of the American Institute of Architects, Committee on Architecture for Justice and other professional organizations having interest in this area.

The observations which follow are derived from my interaction with criminal justice professionals throughout the United States over many years. This interaction has evidenced the need for renovation, modernization and replacement of outdated law enforcement, courts and corrections facilities nationwide.

It is difficult to identify any other area which directly affects the safety and well-being of citizens in every location in the United States, its territories and possessions, which presents greater need. Based upon my personal involvement in the evaluation of criminal justice facilities in over 2400 jurisdictions in the last ten years, I can attest to a national need of epidemic proportions.

The need which is so very evident has several causal factors. Decades of neglect in the allocation of public resources to criminal justice facilities has left a legacy of outdated and deteriorated physical plants. Further, needs have changed as law enforcement techniques, judicial processes and correctional responses have been affected by a changed and changing society. Existing facilities uniformly fail to measure up to features required by contemporary standards. The tremendous current volume of transactions alone renders our existing facilities inadequate.

Police facilities currently in use were designed at a time when modern crime investigative techniques were undeveloped. Space for today's communications equipment, evidence storage requirements, staff training programs, community program support and other activities is in serious short supply and in most instances nonexistent.

Court facilities are unable to properly or efficiently serve the requirements of contemporary judicial process in either their quality or quantity. The number of courtrooms, in relation to the burgeoned volume of case filings, impairs the functioning of the system itself. Court backlogs contribute to the overcrowding of detention facilities. The lack of space

for ancillary functions such as prosecution, defender services, records, jury sequestering and deliberations and others also sharply diminishes the quality of justice which can be delivered under these circumstances. The organization of the many subcomponents of the judicial system within facilities fails to provide definition and separation of public movements from judicial circulations, nor private and secure movement of prisoners to and from court appearances. Both public safety and the interests of the accused are jeopardized.

Corrections facilities today are nothing less than a national scandal, inadequate to provide basic requirements of humane care for those charged or convicted of criminal offense and unable to insure public safety. Documentation of these conditions comes from many sources. At local levels grand juries routinely declare jail facilities unfit for use. Statewide surveys find conditions uniformly inadequate to meet the most minimal standards of sanitation, fire safety and space provisions. At both local and state levels, extreme overcrowding exacerbates these conditions. The proliferation of instances of judicial intervention in the matter of jail and prison conditions throughout the United States in the past ten years has further established that Constitutional minima are not met. The accompanying illustration, Figure 1, presents a map of the United States indicating the 36 states presently facing or operating under Federal Court orders concerning the conditions in their entire system or their major institutions. As depicted in Figure 2, the standards being imposed deal with every basic life support and life safety issues.

Need

It is, therefore, most timely and appropriate that recognition of these circumstances be accompanied by a proposal for their remedy. The Criminal Justice Construction Act now proposed by S.186 is exactly the kind of initiative which is required. Lacking the provisions for funding assistance and standards compliance which it proposes, the conditions of criminal justice facilities can only be expected to deteriorate further and the proper and efficient administration of justice denied throughout the United States.

Such requirements as space for normal activities, separation and protection from assault by other inmates, ventilation, sanitation

facilities, medical treatment facility, outside light and view, artificial light for task illumination, and life safety, fire detection, suppression and evacuation features. The courts have required compliance with only the most basic requirements for life support. Still, it is estimated that 85 to 90 percent of the correctional facilities in the country fail to meet these requirements.

Other indicators of inadequacy are available. Riots and disturbances draw national attention to one state or another on a periodic basis. The scenes illustrated in Figure 3, taken during the McAlester, Oklahoma, riot in 1973, have been repeated many times over. Less dramatic but no less abhorrent is the violence which occurs on an individual and smaller scale basis in institutions throughout the country on a daily basis.

Facility conditions, however, should not be addressed independently from other considerations. These circumstances, even though deserving of attention in their own right, serve also as symptoms of other larger problems. They serve as symptoms of neglect; decades of neglect in public recognition, concern or support for need which has developed. They serve also as symptoms of a dysfunctional criminal justice system; one in which law enforcement is hampered by outmoded facility support, and judicial processes are made more complex and less considerate of user need by their inadequate facility provisions; and as they serve symptoms of failure for the corrections component of criminal justice system, the failure of those who are incarcerated and the failure, in many instances, of those who are outside.

Remedy to this problem, viewed in its larger dimensions will not be found by simply constructing new buildings. Due to their complexity, the problems of criminal justice will not be resolved by any simple or quick measure.

Planning

For this reason, the provisions of S.186 which call for long range planning, with annual updating, and the incorporation of advanced practices as a pre-condition for construction funding are vital. Figure 4, diagrams the decision impact curve which is generally associated with the planning, programming and

architectural development phases. It is seen that the greatest impact, on costs and services provided, is delivered by decisions that are made in the planning stage. Least impactful are decisions made during the latter states of building design or occupancy. Included in the planning stage is the thorough consideration of whether, or to what extent, new buildings are, in fact, required to solve problems of overcrowding or noncompliance with standards.

It is widely acknowledged that systematic planning is vital to the future success of criminal justice agencies in achieving their goals. Planning techniques which at first were primarily applied in designing transportation and land use patterns of urban areas are increasingly being adapted for use in the design of human services systems, particularly public health, mental health, and criminal justice. Although the general principles of rational planning are applicable across many contexts, the criminal justice field presents unique challenges which must be reflected in the planners' approach. In recognition of this, an "advanced practice" approach should incorporate a collaborative planning model which meets these demands for both local and regional criminal justice agencies.

The complex jurisdictional interrelationships among law enforcement, courts and corrections agencies (which span the executive, judicial and legislative governmental branches) render planning for the criminal justice system and its components an intricate and challenging task. Recognizing the need for systematic planning, but faced with limited staff resources, criminal justice agencies often call upon specialized planning and design consultants to assist them in determining desirable future courses of action. The last decade has seen the rapid development of criminal justice planning, programming and architectural design, and the availability of comprehensive planning services to criminal justice agencies. Based on extensive experience in all phases of planning, from goal definition and data-gathering through the development of alternative policies and implementation strategies, recently developed techniques, offer to criminal justice agencies an innovative approach to systems planning.

Collaboration between planners and administrators throughout

the planning process is essential to the development of a creative and pragmatic plan of action. Only managers of the system for which planning is occurring can identify the goals which that system is intended to achieve, since these aims grow out of local values and legal requirements. In addition, the goals of the planning process itself must be defined in relation to local perceptions of the problems, needs and objectives of the system. A full range of collaborative planning and evaluative techniques are available which have been used not only in analyzing individual programs, facilities, policies, and/or organizational structures defined as targets for change by system managers, but also in developing master plans for entire agencies or jurisdictions. Advanced practice brings to planning tasks a diverse and flexible range of techniques and tools with which to analyze the present system, project its future needs, and identify alternative policies. This technical expertise and experience is tempered by the clients' values, knowledge and experience as planning goals are defined, and as policies and programs are chosen, implemented and evaluated. The accompanying chart, the Collaborative Planning Model, illustrates the methods used by Moyer Associates, Chicago based criminal justice planners and architects. Planning must be a continuous, on-going process, as indicated by the circular nature of the chart's flow. Both consultant and client assume interdependent responsibilities throughout the process, denoted on the chart by color coding. Generally, responsibilities which rest with the client agency entail defining the desired scope of the planning effort throughout the process, providing essential information and direction and implementing the resulting plan. Provided is a comprehensive analysis both of present realities and future potentials, so that local decision-makers may make fully informed policy decisions about future actions. The following discussions of each of the seven steps as outlined on the Collaborative Planning Model chart, Figure 5, is intended to clarify the interactive nature of the process.

1 Identification of Planning Goals

At the heart of effective planning is the careful definition of goals, both for the system for which planning is to be undertaken and for the planning process itself. Criminal justice agencies must have a philosophy which guides their actions, and

a set of objectives against which to measure their progress toward goals. Planning for a system or any of its components must be consistent with the system's defined purpose. Thus, prior to commencing planning for any criminal justice agency, planners should work with agency decision-makers to assist them in clearly identifying both the goals of the agency and the objectives which the planning process is intended to achieve.

2 Study of the Present System

Once the scope of the planning process has been delineated, then detailed information regarding the present status of the system can be gathered. A variety of techniques can be employed to develop a comprehensive understanding of an agency's current functioning. The client agency collaborates by identifying problem areas requiring focused study. Interviews with key agency personnel and with others having insights regarding the agency's operation are essential to this process. Specialized surveys are utilized as necessary to obtain information on the characteristics of the agency's clients and/or staff. The resultant profiles of clients and users are used as a basis for evaluating the adequacy of existing facilities, programs and services.

Staff profiles assist in analyzing management styles and structures. Architectural analyses of any facilities which are part of the system are conducted when appropriate; contemporary standards, both local and national, form the basis for such analyses. All of the information gathered during this second planning phase is integrated with any data which the client agency has already compiled to form a complete picture of the present system.

3 Projection of Future Needs

Based on an analysis of historical trends and present patterns of use, which is gained through studying average daily populations and monthly high/low counts, planners should develop projections of future needs.

Forecasts of the number of clients/offenders for which the agency can expect to be responsible in ensuing years are the crux of this third planning phase. Experience has shown that only a detailed analysis of the client population, according to age and sex, will provide projections with a degree of accuracy sufficient to avoid either costly over-building or underestimating probable future needs. Building upon these predictions of population levels preliminary estimates can be developed of the levels of staff, program and facility resources which would be required to achieve the system's objectives, if it adheres to current practices. This current practice projection' then forms the baseline to which comparisons of the needs generated by alternative practices can be made.

Figure 6 provides an analysis of life-cycle costs typically associated with a correctional facility over a 30 year period. It will be seen that capital costs represent approximately 8 percent of the total expenditure with operating costs comprising 92 percent. Recognition of this suggests the most careful consideration of the extent of building need, since future expenditures far outweigh first costs. Also suggested is the incorporation of advanced practices in building need is documented, so that efficiency in operating costs can be attained and funds saved over the life of a building which can easily be greater than its initial cost.

4 Identification of Alternatives

The essence of planning is the careful evaluation not only of current policies and practices but also of possible alternative courses of action. In this crucial fourth planning phase, it is important to develop, in collaboration with the client agency, descriptions and evaluations of a range of policy options. These policy scenarios are based in part on knowledge garnered from the experiences of other criminal justice agencies, in part on applicable research findings and standards for advanced practice, and most importantly, on the goals and directions defined by the client agency.

Criteria to be used in evaluating the various policy options and selecting those most efficient and effective are developed by

the agency as it works with planners in analyzing policy choices. These decision-making criteria must reflect local priorities and needs, coupled with a realistic assessment of available resources, so as to ensure that the final plan can be effectively implemented.

5 Decision-making

Using the criteria developed through close collaboration between planners, administrators and users, the client agency must choose from among the possible policies and future courses of action those which are most feasible and desirable. Each potential combination of policy, program, facility and administrative structure requires differing resource commitments. The client agency should therefore assess the analysis of the requirements and consequences of each option in order to select the strategy most appropriate for achieving agency goals.

6 Presentation of Plan

Translating the decisions made by the agency into a pragmatic plan of action is the next planning activity suggested. The development of an implementation strategy requires careful balancing of policy priorities with resource availability. Recommended changes in policy, programs, and particularly in facilities often must be phased in over a number of years to enable a smooth transition from present to future.

A thorough understanding of the changes planned in various parts of the system is the foundation for a feasible implementation strategy. Any plan should have as its major goal the maximizing of 'benefits' (defined according to system goals) and, simultaneously, the minimizing of costs (not only dollars, but also in human resources). Suggested are the most expeditious methods of allocating resources and phasing in recommended system changes with the least possible cost or disruption of functioning. Methods for evaluation of the effectiveness of new policies, programs, or facilities are also an integral part of the plan. Collaborating with the client agency, planners should develop an evaluation methodology which will allow the agency to routinely assess its progress toward objectives and goals as it implements the action plan.

7 Implementation and Evaluation

Equipped with the implementation strategy and evaluation methodologies it is possible to make the action plan a reality. The agency at this point commits itself to a defined course of action with the assurance that the plan reflects locally defined needs, goals, and resources and, further, that it is based on a thorough analysis of valid data and a consideration of various options. It is, in short, a rational and defensible plan. The close collaboration between planners and the client agency which has characterized the entire planning process ensures that the final plan will represent the agency's own objectives and goals.

Evaluation of the effectiveness and efficiency of the changed systems, be they organization, programmatic or architectural, may well lead to the identification of areas needing further study or modification. Addressing these areas may require modifying the action plan or implementation strategy, and may even call for development of further plans to address unmet or newly identified needs. Clearly, planning, implementation and evaluation of changes in any criminal justice agency are continuous, interwoven processes.

Summary

The outcome of planning efforts undertaken by planners in collaboration with clients is a plan of action which will most efficiently attain the goals identified by the clients, while satisfying projected needs. Recommendations generated by this collaborative planning process may focus on the physical and programmatic design of a single criminal justice program or facility, or may encompass the criminal justice philosophy, organizational structure, programs, and facilities of an entire state. Using a diverse range of techniques which can be flexibly applied in any criminal justice setting, this "advanced practice" approach in the field of criminal justice planning and design is seen as consistent with the language and intent of S.186. It translates program and operating requirements into architectural design and program concepts which are responsive to clients values and goals, contemporary standards and accepted practices in the field. An integrated

array of systems planning and design services could be expanded for under the impetus of S.186, for the criminal justice community.

Finally, I would like to address the clearinghouse feature of S.186. This clearinghouse, which would function in relation to the construction and modernization of criminal justice facilities, could serve a vitally needed information dissemination function. The National Clearinghouse for Criminal Justice Planning and Architecture, which functioned in this area is no longer in existence. Evidence of the interest and need for the technical assistance services which it provided is indicated by the volume of its activity. Figure 7 depicts the locations of technical assistance delivery by the National Clearinghouse between 1970 and 1977. Over 90 percent of clearinghouse activity after its initial year, was in information dissemination and practices in design. The initial year, 1970, was devoted to researching and developing guidelines for planning and design in corrections, and later in the courts and law enforcement areas. These guidelines have been almost totally incorporated in the standards subsequently promulgated by various professional organizations and study commissions. Included is the Report of the Task Force on Corrections of the National Advisory Commission on Criminal Justice Standards and Goals. The Monograph on Jail Architecture of the National Sheriff's Association, the Standards for Correctional Facilities of the American Public Health Association, the new life safety requirements for Detention and Correctional Occupancies of the National Fire Protection Association, the Standards for Accreditation of the American Correctional Association, the U.S. Department of Justice Standards for Prisons and Jails, and the publication, Prison Architecture, developed under the auspices of the United Nations and published in London. The extent of this latter international involvement indicates again an extensive need which was addressed by the National Clearinghouse.

Similarly, the National Clearinghouse was invited by many states to participate in the updating or development of jail standards for their state, furthering the consistency of standards which now prevail in the field.

Still, the need is presented for the on going evaluation of the effectiveness of state-of-the-art concepts. Facilities now constructed which have incorporated recently developed design approaches should be evaluated and research findings disseminated on a wide scale. This could be an important function of the Clearinghouse proposed under S.186.

In summary, S.186 is viewed as a measure which is vitally needed to address a problem area of national scale and epidemic proportions. The continuity of attention which is ensured by a seven year program is a most important feature. Necessary system planning cannot occur without this.

In order that recent progress in standards development is not eroded by the pressures generated from massive system overload, the attention focused by S.186 is needed immediately. The advanced practices conditions should most certainly be prominent in the administration of S.186, even while they continue to be subjected to scrutiny and evaluation based upon experience with them in the field.

Multi-jurisdictional planning and information transfer between jurisdictions would be stimulated by S.186 and the more effective deployment of limited public funds encouraged.

Recognizing that various other interested parties may make proposals for modifications of S.186 in various of its features, and that such modifications may serve to refine the focus and application of the bill, it is hoped that support for this important legislation will be as broad-based as is the need for it.

FEDERAL COURT ORDERS



FIGURE 1

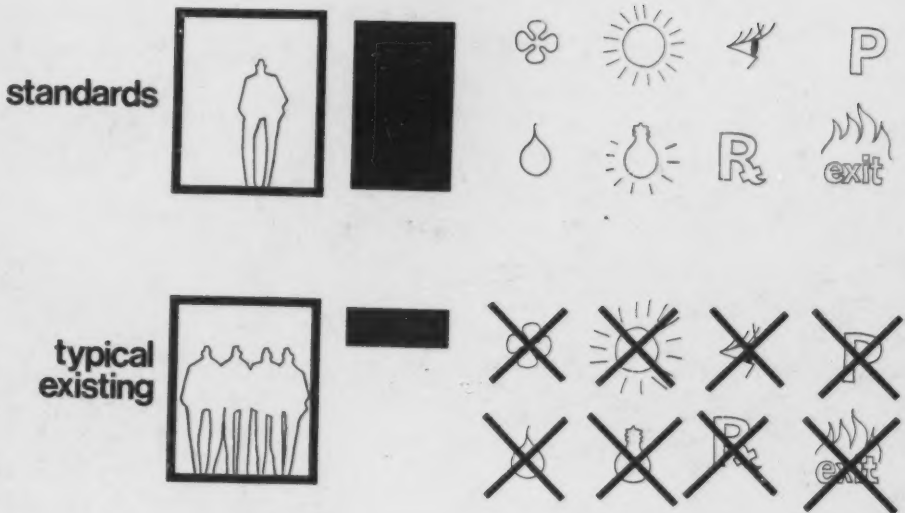
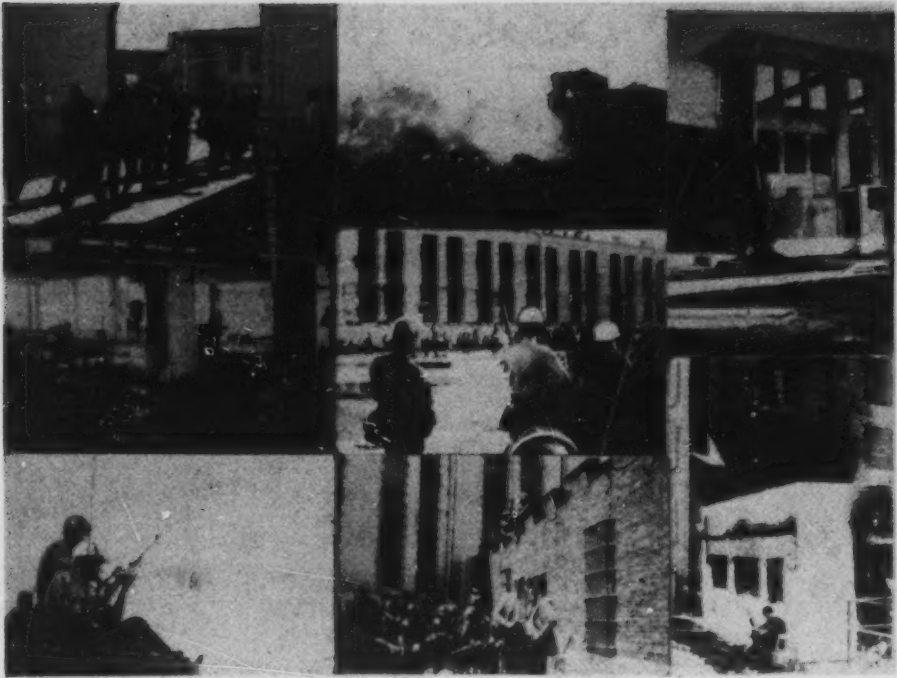


FIGURE 2



Riot
MacAlester, Oklahoma
MacAlester State Penitentiary

DECISION IMPACT

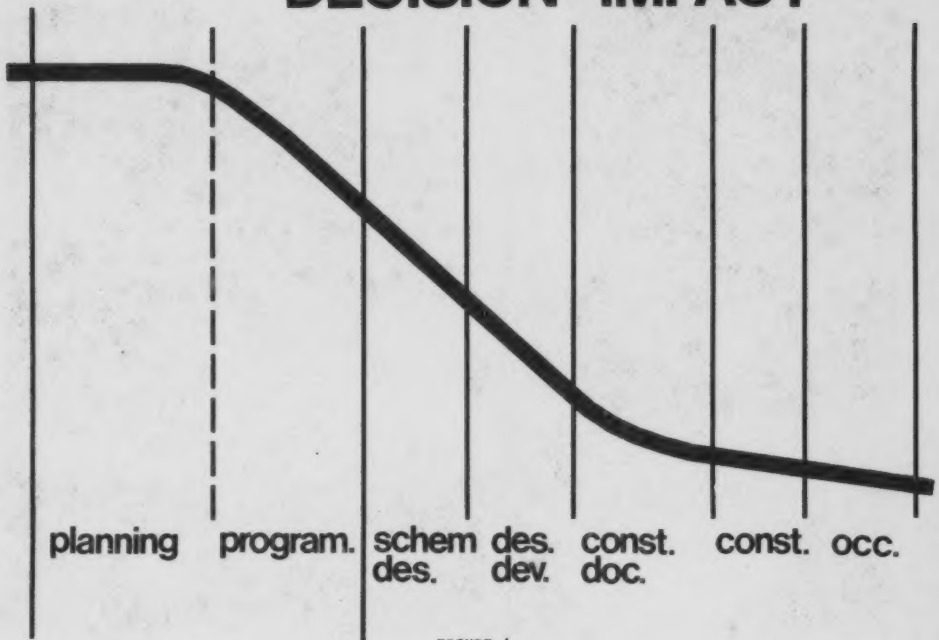


FIGURE 4

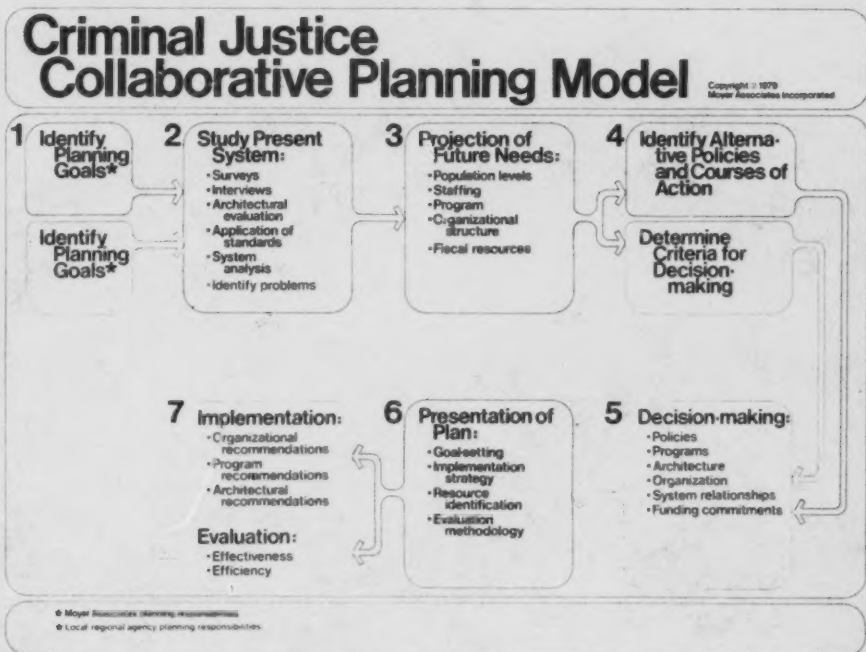
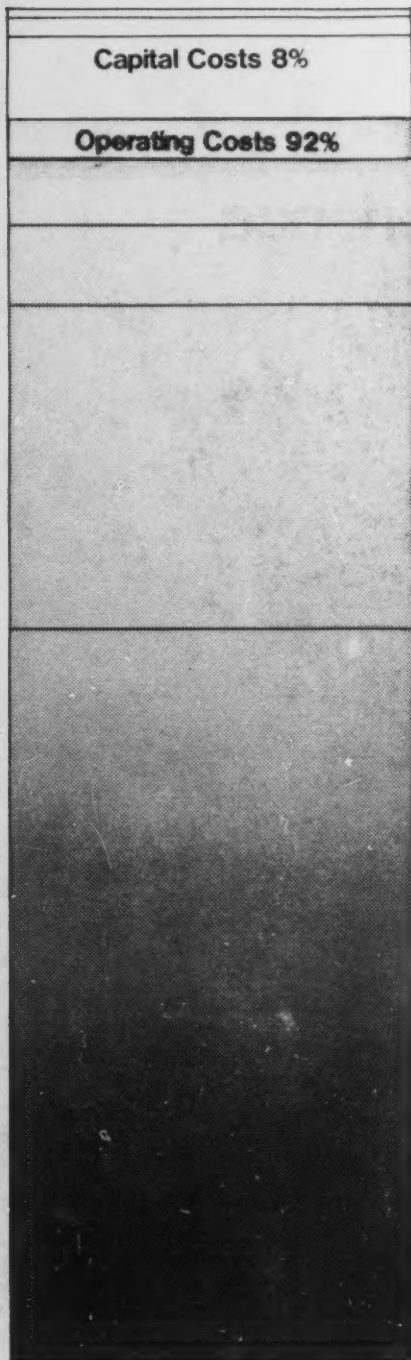


FIGURE 5



1 1/2% A / E Fees
 1 1/2% Furnishings / Equip.
 6% Construction
 3% Maintenance / Supplies
 5% Food
 6% Utilities

 24% Salaries - Civilian

 54% Salaries - Sworn Officers

Estimated 30 Year Life Cycle Cost For a Corrections Facility



Moyer Associates Incorporated

FIGURE 6



FIGURE 7

Senator GRASSLEY. We are going to call this meeting to an end due to time constraints. I want to thank the last two witnesses for agreeing to come back at our next scheduled hearing, which will be early next month.

I want to thank Tony, and you Mr. Moyer, for your fine testimony. You, too, may expect that other members of the committee will be submitting questions to you in writing, and we would appreciate it if you would answer those for the record.

This meeting is now adjourned. Thank you very much.

[Whereupon, at 12:05 p.m., the subcommittee adjourned, to reconvene at the call of the Chair.]

THE CRIMINAL JUSTICE CONSTRUCTION REFORM ACT

MONDAY, JUNE 8, 1981

U.S. SENATE,
SUBCOMMITTEE ON CRIMINAL LAW,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to call, at 9:50 a.m., in room 2228, Dirksen Senate Office Building, Senator Robert Dole (acting chairman of the subcommittee) presiding.

Present: Senators Heflin and Bumpers.

Staff present: Richard Velde and Yolanda Branche, counsel to Senator Dole; Charles Borden, professional staff member, and Grace Rienhoff, chief clerk, Criminal Law Subcommittee; Linden Heck, counsel to Senator Laxalt; Miriam Mills, counsel to Senator Specter; Pat Jackson, research assistant, Judiciary Committee; William Massey, counsel to Senator Bumpers; Lynda Nersesian, counsel to Senator Grassley; Dickson Burton, counsel to Senator Hatch; Paula Argento, professional staff member for Senator Heflin; Nancy Popik, special assistant to Senator East.

OPENING STATEMENT OF HON. DALE BUMPERS, A U.S. SENATOR FROM THE STATE OF ARKANSAS

Senator BUMPERS. Senator Dole has been unavoidably delayed, so we are going to go ahead and start the hearings to accommodate the witnesses, some of whom have come a good distance to testify. Senator Dole should be here in a few moments.

All of you know, of course, that we are here to consider a range of problems dealing with criminal justice, the condition of the country's prisons, and so on, but especially S. 186 which Senator Dole introduced some time ago, and which I happily jumped on-board with.

We all know the statistics on the crime rate. I saw one recently that said fully 45 percent of our citizens are afraid to walk alone at night even in their own neighborhoods.

That means that we, who pound our chests and boast of being the greatest and the freest Nation on Earth, are really held hostage to our concerns of being victimized by a criminal. It sounds more like we are living in a combat zone, and some American cities have become just that.

Each evening when you watch the television news, you wonder whether still another child is going to be found in Atlanta, and we are still reeling from the attempted assassination of President

Reagan. Every American citizen ought to be saddened and outraged by these events.

That is the bad news. The good news is that there seems to be a renewed commitment, at least at the Federal level, to the goal of finding and implementing effective and lasting solutions to this problem. Chief Justice Burger, in an address to the American Bar Association a few months ago, focused his attention and the country's on possible solutions, and since then many members of this body have entered the debate with ideas of their own, ranging from gun control to capital punishment to bail reform.

In the midst of all this, of course, Senator Dole has introduced S. 186. One need look no further than the recent tragedy of the New Mexico penitentiary riots—and Michigan I might add—for evidence of the volatile potential existing in many State prisons. It is my thought, and I truly believe that without some kind of Federal assistance the conditions that led to the New Mexico and Michigan riots are going to continue.

The current problems in my own State are a compelling example of the need for the legislation. Although the Arkansas prisons are light years from where they were in the 1960's due the progressive leadership of a series of dynamic Governors down there in the 1970's, Arkansas prisons still have very serious problems. Conditions there still don't meet minimum constitutional standards.

Why, with so many people dedicated to providing decent prison facilities, why can't Arkansas prisons be brought up to the minimum constitutional standards? The answer is simple—lack of money. Arkansas is not a wealthy State, and there just isn't enough money to construct and staff a prison facility which would meet those standards.

The Arkansas Department of Corrections tells me that the Cummins Unit of the Arkansas prison ideally should house about 900 inmates. They claim the absolute maximum should be 1,350. Today the population is 1,650, or 750 more than there should be. It is literally bursting at the seams.

The city and county jails in my State are in a similar condition. Arkansas has 150 local jails, and according to the Arkansas Criminal Detention Facilities Board, more than 85 percent of them do not, and cannot for lack of funds, comply with minimum standards. They house twice as many inmates as they are designed to house.

The city and county officials are trying to deal with the problem. They know that most of these jails would not survive a court challenge; many of them have already been closed.

All of us here know that funding prisons and jails is not a heavy political issue back home. It is not even popular to talk about it. Many Americans inaccurately perceive these overcrowded prisons as country clubs, where inmates do nothing but sit around and watch TV at taxpayers' expense.

Those of us who have visited these institutions know that it is not true. One visit to the Cummins Prison in Grady, Ark., will make a believer out of anyone, as it did of me about 3 months after I was elected Governor. But my point is that we will not be getting tons of mail from folks back home urging the passage of this bill.

If we are really serious about dealing with crime, we have to deal with the Nation's prisons as well. Parole officials feel pressure to

parole inmates to make room for others, and this of course constitutes a revolving door policy, and the overcrowding itself spawns its own kind of violence.

It makes no sense to provide defendants with the most elaborate set of constitutional protections known to man and then throw them into inhumane and archaic penal institutions. The 19th century Russian novelist Dostoevski said that a country can best be judged by the condition of its prisons, and Winston Churchill echoed that not many years ago. We ought to keep these words in mind as we consider this bill.

I also want to thank Senator Dole for inviting me—I am not a member of this committee—to sit in on these hearings. I express my gratitude to him publicly for that because I am an ardent and enthusiastic proponent of the bill which he has introduced.

I heard Ed Meese over at the White House make a statement not long ago that he favored the concept, and I have written him, asking him to get the White House to throw its full weight and support behind it, and they have done so. Unfortunately, at this point, David Stockman apparently has vetoed this.

With your indulgence, I would reverse the order of the first two witnesses because of a very stringent time schedule. Mr. Geltman, who was scheduled to be the first witness, I will ask him if he would not mind allowing Mr. Ferris E. Lucas, executive director of the National Sheriffs' Association, and Mr. William Lucas, sheriff of Wayne County, Detroit, Mich., to come and testify as a panel first.

Would you gentlemen please come forward.

STATEMENT OF FRANCIS R. FORD, DIRECTOR OF JAIL OPERATIONS FOR THE NATIONAL SHERIFFS' ASSOCIATION, REPRESENTING FERRIS E. LUCAS, EXECUTIVE DIRECTOR OF THE NATIONAL SHERIFFS' ASSOCIATION

Mr. FORD. Thank you, Senator.

I am Francis R. Ford, director of jail operations for the National Sheriffs' Association. I am here representing Ferris Lucas, the Executive Director of NSA, who unfortunately, regrettably, was unable to appear this morning because of a long-standing commitment to speak at a State Sheriffs' Association. He asked to appear here before you to express his support for Senate bill 186, the Criminal Justice Construction Reform Act.

As you are well aware, the American sheriffs operate the overwhelming majority of the county jails in the United States, and they have done so since the beginning of this country.

On any given day, it is estimated that 158,000 men and women are incarcerated in these jails. This is one-third of the total U.S. incarcerated population. In any 1 year, about 4 to 5 million citizens pass through our local jails, and this is far more than the State and Federal prisons ever see.

Despite these numbers, most penal reform has focused on prisons for long-term inmates. This is due in part because the local jail has long been considered or acknowledged as the "stepchild" of the criminal justice system. For a good many years, sheriffs have been telling those who would listen that we must put more money into jails if we are to avoid fire and health hazards.

What is not generally considered is that each of long-term prison inmates at the beginning of their criminal career probably spent time in a local jail. If a concentrated effort had been made then to change deviant behavior, if this was in fact possible, when the jail experience was probably then most frightening, they may not have made the big time. But for this to happen, physical conditions have to be conducive to change.

We must not forget the jail staff who work inside the facility, at jobs where the stress level is high, and where healthful or unhealthy, overcrowded, and dilapidated facilities affect the staff health and attitudes. The turnover in jail personnel in these facilities far surpasses that in other segments of the criminal justice system.

Court decisions have forced some improvements in living conditions, but for the most part the conditions remain the same. Local officials have lacked the money, the knowledge, or the desire to correct these conditions. For whatever reason, the fact remains that funds have not been forthcoming to create lasting changes in the operations of jails that are substandard.

Sheriffs understand only too well that in the 1980's jails which operate according to law will have to meet mandated standards. They understand, too, that this is simply not possible if the physical plan of the jail is a horrible, outdated facility operated by too few jail officers at the lowest possible price.

The biggest problem they have faced in promoting improvement in jail operations can be summed up, as you just said Senator, as community neglect. It was true in the past, and it is true today.

In many ways it has been this community neglect which has caused the national jail crisis, triggered over a decade ago when the courts of our country began to demand that the jails be operated according to minimal constitution standards.

Since the inception of OLEA, and later on LEAA, our Federal Government has poured billions of dollars into our system of criminal justice, but an estimated two-thirds of those dollars were directed toward professionalizing agencies with the responsibility of arresting offenders. The other one-third, we have spent protecting the practice of incarcerating offenders, but little on their custody. The other third, for the most part, was directed toward courts and corrections.

Finally, a good many jails are in trouble, and money appropriated and wisely spent will go a long way to overcome the poor conditions of our Nation's jails. There is a need for governmental funding at the national level to assist counties in meeting the jail crisis, which will give them jails which conform to constitutional standards, no less and no more.

Thank you, Senator.

Senator BUMPERS. Thank you, Mr. Ford.

[Prepared statement of Mr. Lucas follows:]

PREPARED STATEMENT OF FERRIS E. LUCAS, EXECUTIVE DIRECTOR,
NATIONAL SHERIFFS' ASSOCIATION; PRESENTED BY FRANCIS R.
FORD, DIRECTOR, JAIL OPERATIONS

At a time when attention is focused on the adverse conditions that exist in the local jail, I want to address the potential that the Criminal Justice Construction Reform Act has for alleviating these conditions.

Senator Dole and his staff are to be commended for proposing this forward legislation that would provide federal funds to address these inequities.

The American sheriffs operate the overwhelming majority of county jails in the United States and have done so since the beginning of this country. The sheriff is defined in many of our state constitutions as the chief law enforcement officer of the county where he serves, but he is also the chief correctional officer since the laws direct him to operate the county jails.

On any given day, it is estimated that 158,000 men and women are incarcerated in these jails - this is one third of the total U.S. incarcerated population. In any one year, about four to five million citizens pass through our local jails - this is far more than state and federal prisons ever see.

Despite these numbers, most penal reform has focused on prisons for long-term inmates. This is due in part because the local jail has long been acknowledged as the "stepchild" of the criminal justice system. What is generally not considered is that each of these long term prison inmates, at the beginning of their criminal career probably spent time in a local jail. If a concentrated effort had been made then to change their deviant behavior, when the jail experience was probably most frightening, they may not have made the "big time". But for this to happen, physical conditions have to be conducive to change.

Court decisions have forced some improvements in living conditions, but for the most part, the conditions remain the same. Local officials have lacked the money, the knowledge or the desire to correct the conditions. For whatever reason, the fact remains that funds have not been forthcoming to create lasting changes in the operation of jails that are substandard.

Sheriffs understand only too well that in the 1980's, jails which operate according to law will have to meet mandated standards. They understand, too, that this is simply not possible if the physical plant of the jail is a horrible, outdated facility operated by too few jail officers at the lowest possible price. The biggest problem they have faced in promoting improvement in jail operation can be summed up in two words: Community Neglect! It was true in the past and it is true today. In many ways it has been the community neglect which has caused the national jail crisis, triggered over a decade ago when the courts of our country began to demand that the jails be operated according to minimal constitutional standards.

For a good many years, sheriffs have told those who would listen that we must put money into the jail if we are to avoid fire and health hazards. The keynote speaker at the 1977 National Assembly on the Jail Crisis pointed out that, next to the police, the nation's jails deal with the largest number of people who come into contact with the criminal justice system. Logically, then, it follows that jails should receive a large share of criminal justice resources to work out solutions to their problems and improve conditions for inmates, but this has not happened. The speaker noted that because few people actually are concerned about the jail or will assume responsibility for its operation, the problems eventually will need to be resolved by the courts. Courts, however, are only equipped to handle the most severe and immediate problems, such as overcrowding or lack of medical care. Thus, the problems facing the nation's jails today involve those who come into the system, the development of good alternatives to placing so many people in jail, and the need for dramatic changes in the public's attitudes about who should be jailed.

One of the major challenges faced by public officials for the remainder of the twentieth century is to convince the general public that it must accept the responsibility for this nation's jails and assume the task of momentous change after 200 years of neglect.

Unfortunately, many of the ill-advised, talk in terms of new jail construction as if the sheriffs were advocating building the inmates luxurious

hotels. These people forget that the jail staff works inside the facility at jobs where the stress level is high and where unhealthful, overcrowded and dilapidated facilities affect staff health and attitudes. The turn over in jail personnel in these facilities far surpasses that in other segments of the criminal justice system.

I am sure that most sheriffs would never contend that a new or renovated jail facility will solve all the problems of confinement, but serious problems will continue to plague the jail operation if the building fails to meet health, fire and building code standards. This in fact can be the Achilles heel of a well managed jail. Nor would sheriffs insist on new jail construction if renovating the older facility would suffice to meet contemporary, constitutional standards. It is highly important when a jail construction change is discussed, that a qualified advisory committee in the county render competent advice on possible new jail construction. Too many counties have found themselves saddled with very expensive new jails which cannot be operated in a cost effective manner. Almost invariably sheriffs find that a new jail means additional staffing to conform to current standards. The local criminal justice community also needs to have a solid ballpark estimate on how long the new jail construction is supposed to last. It makes a big difference when it comes to amortizing the cost - whether this is done over a 10 or 25 year period. No new jail construction should ever be attempted without the concurrence of all facets of the criminal justice system - courts, police, attorneys, corrections.

Consideration has to be given to the problems that result from the inequities in the other components of the criminal justice and social welfare systems. Many jurisdictions do not attempt to find proper assistance for society's problem people - vagrants and alcoholics - and police officers have no place to take these people except the jail. Added to the problem of providing housing for society's outcasts is the problem of overcrowding in the prisons: because of a lack of cell space in the prisons, inmates who have received sentences must often be detained for lengthy periods in local jails. As to its size, to what extent does the community intend to utilize pre-trial diversion such as citations, summons, probation, etc.

when it deals with people who run afoul of the law? These considerations as well as the length of sentences bear directly on jail populations. A new jail which opens its door the first day only to find it is already overcrowded, is a jail that fell through the crack during the planning process. People in a community will not always necessarily agree on who should be locked up and for how long.

So you see, Senators, the mere appropriation of funds is just the tip of the iceberg. A good many jails are in trouble, and money appropriated and wisely spent will go a long way to overcome the poor conditions of our nation's jails.

I hope that the government at the national level will assist the counties in meeting jail crisis through funding which will give them jails which conform to constitutional standards - no less and no more!

Senator BUMPERS. Sheriff Lucas.

STATEMENT OF WILLIAM LUCAS, SHERIFF OF WAYNE COUNTY, DETROIT, MICH.

Sheriff LUCAS. Thank you very much, Mr. Chairman, and members of the subcommittee.

My name is William Lucas and I am the sheriff of Wayne County, the third largest county in the United States. Wayne County, with the city of Detroit as its major city, I believe generally reflects the existing conditions that exist throughout the United States.

Also, Mr. Chairman, as you mentioned, the State of Michigan, with the problems that we have recently encountered, is not unique, although Michigan is among the most advanced States as far as implementing the criminal justice procedures.

My testimony today, along with the concern which was echoed by my associate from the National Sheriffs' Association, will deal not only with county jails, but concerns the police, court and other criminal justice facilities that I believe are in need of serious attention.

I was born and raised in the city of New York, and was, in fact, a New York City policeman for approximately 9 years. During that period of time, I worked out of about three or four separate buildings.

Mr. Chairman, each one of them had formerly been a school, an elementary school or a junior high school that had been converted for use as a police station. In fact, just recently, while looking at one of my favorite television programs, "Hill Street Blues," I recognized a couple of those buildings that I had worked out of, and they were ancient, archaic buildings.

I think over the years it has been my observation, not only in New York but in large metropolitan areas, that old buildings, apartment or offices, and schools, for example, are converted for use as police precincts, criminal courts, and sometimes even jails.

These buildings were never designed for this purpose, and these inadequacies have become even more evident in recent years when, as you recall in the latter part of the seventies, we have had to be concerned in our police work about securing our buildings from bomb threats and from persons invading the police stations and police precincts.

I think it is one of the grim ironies of our contemporary society that citizens, our citizens entering public buildings, as we did here today, must be searched, must be observed, with costly security installations, such as security video, floodlights and alarms, and even in some instances, in my city, a private police being hired to patrol the hallways and the periphery of the police and court buildings.

Therefore, one of my recommendations to this subcommittee would be that we put to use some of information that has been obtained by studies sponsored by the Law Enforcement Assistance Administration in the past, pamphlets that have been published by the National Institute of Corrections, the Commission on Accreditation for Corrections, and the National Sheriffs' Association to correlate the state-of-the-art that presently exists.

Police buildings and courts are unique and should be well planned to serve their special purpose, and that is most certainly the case in the jails. We should consider the use of competent architects and planners.

My reference to the LEAA studies that have been done in the past would more specifically concern the clearinghouse that formerly existed at Champaign, Ill. You will recall at that time the function of that clearinghouse was to develop the state-of-the-art as far as corrections facilities were concerned to make recommendations for the architecture and the materials that are supposed to be used in jails.

At the present time, along with many other sheriffs and other county government in this country, we are in a rebuilding process. Most of us operate and continue to operate jails that are over 50 years old. My building happens to be about 70 years old and is in a constant state of disrepair, and in fact requires almost \$1 million a year just to keep it up.

Senator BUMPERS. You only operate one detention facility? You only have one detention facility for Wayne County in the sheriff's department?

Sheriff LUCAS. Unfortunately, I am operating two at the present time. There is one main building and what is now considered an annex. I think the fact that I am required to operate an annex demonstrates the problem that we face. The reason I am required to operate the annex is because of a court order.

A jail that was built 70 years ago to house 1,000 prisoners, not long ago, several years ago, we found that we had approximately 1,800 to 1,900 inmates in that jail. These, Mr. Chairman, were just persons awaiting trial. These were not sentenced prisoners. So we had the situation of having two to three people in cells that were

originally built for one person, and one person was sleeping on the floor.

The condition became so bad that a court found that the jail was a cruel and inhumane place to house inmates, and set a specific limit on the number of prisoners that could be housed at our facility. It, therefore, required us to stop accepting additional prisoners, or to establish an annex, which is what had to be done.

Unfortunately for those of us who are in administration, the annex happens to be about 30 miles away from the main jail, and from the downtown court facilities. You can see the administrative headaches that this causes delivering prisoners back and forth.

Senator BUMPERS. Is that the situation now?

Sheriff LUCAS. That is the situation at the present time, sir. Adding to that is the fact that the recent uprising that took place at our State facility at Jackson, Mich., has required them to stop accepting additional prisoners from the local systems, causing a backup in our systems.

We are now finding that we are accepting prisoners from the court and from the local municipalities but then have no place to forward them on as they are found guilty. You can see what that is going to cause in the next several weeks.

We are working on it on a day-to-day basis, but we anticipate that it is only a matter of time, unless Jackson Prison starts receiving our prisoners, until we will have the headache of maintaining them in, again, an overcrowded situation.

In the matter of prisons and jails, investigations into the cause of the recent uprisings in prisons and jails throughout the United States and Canada, indicate the major cause has been related to overcrowding. This, of course, has been no surprise to the administrators of these facilities who have for many years attempted to decentralize major prison facilities.

In the State of Michigan, which I stated earlier has a reputation for having an outstanding penal system and very enlightened administrators, and which incidentally operates one of the largest walled facilities in the United States, Jackson Prison, which is where one of the eruptions took place, this was not totally unexpected.

It should be noted that for several years, administrators in the State of Michigan have attempted to obtain funding to establish smaller regional prisons in several parts of the State. However, because of Michigan's very poor economic situation, and also because of local resistance from persons who recognize the need for prisons but as usual feel that they would prefer not to have these facilities in their area, these projects have been very slow to materialize.

It continues to be one of the conditions of our times that most of our citizens want to have criminals removed from our society, but would not want to pay the price for it, and would not want these people located, as I stated earlier, in their area.

I therefore recommend further that your committee encourage the construction of smaller facilities and prisons regionally, as recommended in Michigan, and, further, that your committee consider as one of its priorities, establishing machinery to educate the

citizens of a growing need not only for these facilities, but to consider other less costly alternatives to incarceration.

Thank you.

Senator BUMPERS. Thank you, Sheriff Lucas.

Senator Dole has sent a number of questions here, and I will ask those questions for him. Sheriff Lucas, these were designed for you.

He has asked for you to describe the conditions in the two facilities you operate right now. I know they are hardly a country club. I don't want you to make a self-defeating statement because I know you are a politician like the rest of us, but still we are all aware of the conditions of all the jails and prisons in this country.

Sheriff LUCAS. I think, Senator, like all politicians, we are honest and we call it just like it is, besides everyone knows what the conditions are in my jails. It is part of court records.

Senator BUMPERS. What is the current population, and what is it supposed to be?

Sheriff LUCAS. As I pointed out earlier, we reached a maximum of about 1,800 at one time about 8 years ago, and at that time the court took jurisdiction. At least, I was placed under several court orders limiting the population to a maximum of about 850, which I have steadfastly maintained for the last several years. To do so, however, required that I establish an annex in another part of the county that now houses up about 300 to a maximum of 400 inmates.

We are able to keep the population of our jails fairly stable by following several procedures. No. 1, by working very closely with our courts.

The Michigan Supreme Court at first appointed a series of jurists and had a crash program that immediately took those inmates in our jails who could be processed and sent on to the State or Federal institutions, or let out on a minimal bond, or put on parole or probation. That reduced the population almost overnight to some manageable number.

Now what we have ongoing is a series of consultations between us and the jurists, so that when we find our population on the rise, we immediately contact them, and they give priority to our situation.

Senator BUMPERS. When you say, they give priority to your situation, Sheriff, does that mean that they probably bail or bond some persons that they might not otherwise?

Sheriff LUCAS. No, they would not. What they would do, if possible, they would look to see whether it is possible for them to try that case, give that the priority in trial, rather than those persons who are already out on bond. We find that this has been very helpful to us.

SMALLER FACILITIES PREFERRED

Senator BUMPERS. What do you consider to be the optimum size? You have recommended smaller units be constructed, and of course you know the political problems with that. Nobody wants a penitentiary within 50 miles of him.

Certainly Jackson, and I don't mean this in any way to denigrate the State of Michigan, but I think Jackson is a classic case in point of what not to build. What is the population, incidentally, there?

Sheriff LUCAS. I believe Jackson Prison has about 4,000 inmates in its facilities.

In defense of Jackson Prison and its administrators, they have tried for several years, they have worked very hard, and in fact had received legislative approval, but lacking the funds to carry out that approval to establish jails with smaller numbers in various parts of Michigan.

My recommendation as to the optimum is what I am in the process of implementing right now. As the sheriff of Wayne County, I am in the process of building a new facility in downtown Detroit. We initially had expected it to house about 600 maximum. We anticipate that when it is completed in 1982 or early 1983, it will probably house about 550.

I would feel that that is the absolute maximum, and would recommend somewhere between 500 and 550 as the absolute maximum for housing of inmates in smaller facilities. I find that these facilities are, No. 1, easier to administer, and second, and equally important, they are much easier to replace at a later time.

Senator BUMPERS. Does it raise administrative costs to have a series of smaller institutions, rather than one large one?

Sheriff LUCAS. My understanding is, from those persons who are advising me, that it does not cause additional administrative costs because of the ability to construct and to administer, and because of the energy savings procedures, and so on.

Actually a saving can be realized by operating smaller facilities. Second, the replacement cost, when that becomes necessary, makes it a lot easier to obtain funding for a smaller institution than it would to replace a Jackson.

Senator BUMPERS. Do you think there ought to be enough flexibility in the design of these buildings to design them for one purpose, with the long term view that they might be used for another purpose when they are no longer needed; is that possible?

Sheriff LUCAS. Yes; when you are building a multipurpose building, if you are building a building that will house several functions, that could possibly be a good idea. I think in my testimony what I recommended was that there are certain state of the art existing today. For instance, as sheriff one of my responsibilities is to provide protection for the circuit court of my county, and I find that when we have a particularly notorious trial in operation, because of the way the building was constructed, we have to utilize the use of a tremendous amount of manpower to provide not only for the security of the jurists, but to provide protection for the judge to prevent intimidation.

I feel that at the present time, there is a great deal of information that has been published, particularly by the National Sheriffs' Association and collected by LEAA over the past years. There exist at the present time many suggestions as to how to construct a proper court building, for instance, to provide security.

Again using the same example for the jails and police stations, in my area we find that the Detroit Police Headquarters, which is located directly across from my office, must maintain television

cameras and other protective devices to protect the building from what they consider might be a danger to the security of that building.

So my recommendation would be that for those buildings that are built specifically for multi-purposes, and there was that understanding, even there consideration ought to be to take the information that currently exists, and to get architects and planners, many of whom do not exist today and who widely scattered, to form some kind of working relationship to get those people together, and develop that state of the art much more than it is today.

Senator BUMPERS. Sheriff Lucas, let me ask, does Wayne County have a master plan for design of a criminal justice system?

Sheriff LUCAS. Senator, I regret to tell you that, along with many other counties, I am afraid that Wayne County does not.

Senator BUMPERS. Let me ask a question directed to both you and Mr. Ford. How do you evaluate the politics of raising the amount of money that would be necessary to even begin to accomplish what Senator Dole and I and others are trying to accomplish; what are the political possibilities of getting that done without the passage of this bill?

I know in Michigan, your Governor is a very good friend of mine, and Job never had as many problems as he has. So I know what the money situation is in Michigan.

Sheriff LUCAS. As you stated, Senator, we in Michigan have been in a state of depression for the past 5 years. The City of Detroit is well over \$100 million in debt. The County of Wayne has an over \$20 to \$25 million deficit. It is expected that our county alone will have payless paydays for the third straight year sometime at the end of August, when employees will not be able to get their pay because of the lack of funds.

The opportunity and the possibility of actually constructing new buildings is just about impossible. The only reason we are constructing one now is because of the situation that existed 8 to 10 years ago, we were able to go to the citizens of the county, and they imposed a tax upon themselves to build this new facility, which it has taken this long to complete.

Senator BUMPERS. It certainly speaks well for you.

I think one of the thrusts and reason Senator Dole introduced this was to stop the revolving door policy of turning inmates out in order to make room for more, because that is where a good portion of the crime problem of the country is.

The other problem is that this bill envisions the local districts raising some of the money to complete these projects. We are talking about \$6.5 billion as the Federal share over a 7-year period. I am sort of curious how would you suggest, Mr. Ford, that we go about educating people to the desirability of this kind of legislation, indeed the desirability of building more penal institutions to try to eliminate this problem?

Mr. FORD. You said earlier in your opening statement, Senator, and I guess I am living proof. I am a former sheriff myself, and one of the first acts when I took office was to instigate action that would allow me to build a new jail. I am from 77 miles up the road in Washington County, and we had a jail that was built in 1845 that was housing three times the inmates it was built to hold. As

you said, politicians are not elected on platforms that have a plank that advocates building bigger and better jails or prisons, or whatever it might be.

I think, though, we have a tendency to address the jail problem or the jail crisis as the real problem, when really it is only a symptom of the real problem as I see it. We can build new jails, and without addressing other alternative plans, or indoctrinating people into the need for alternative plans, it is just like shoveling sand against the proverbial tide, we are going to be back in the same situation again.

We also have a tendency to address large institutions as being the real problem. The real problem is not necessarily in large institutions. Eighty-five percent of all the jails in the country today house fewer than 20 inmates, those people that make up the 20 or fewer inmates further on down the road are the people that Sheriff Lucas was alluding to, that later on become our problems.

I just came back from doing a study in a jail on the west coast that had three times the inmate population that it was built to hold, yet there was no detox program, they were still incarcerating the alcoholics. They had five mental patients that could not get into a medical hospitals. These are the types of problems that also have to be addressed in unison with the funding of new facilities.

New facilities in themselves are hot going to be panacea to prison reform, or jail reform as I know it. There are so many other variables that we have to take into consideration. I don't think there is one master plan that you consider when it comes to building jails, because a jail has to be built to suit a particular community.

You can't say, this is the model that we are going to use for building jails around the country, because there are so many other variables. It will take a long, hard, fast study before we ever get into something like this.

It is possible to sell a community on the need for a new jail, and there are many techniques to employ. As I said, this was really my demise, the new jail, because it came about at a time when I was classified as a big spender from the city, being a retired metropolitan policeman.

Senator BUMPERS. You ought to join us Democrats and run for reelection. [General laughter.]

Mr. FORD. That is exactly right. I came along at the wrong time.

Anyway, it is possible to sell them on the need for a new jail. The people in the community of Washington County now realize that there is a need, and we are breaking ground. It did not come easy. It is a hard, fast battle. But someone has to become totally dedicated to the needs for programs and new facilities.

Senator DOLE. First, I will apologize for being late. We had a meeting of our Kansas delegation that went beyond the time.

I appreciate and thank Senator Bumpers not only for his help this morning, but for his interest in this problem, which probably predates mine. I appreciate his help with S. 186.

I agree with the statement just made. I don't suggest that this bill is the panacea, but I would hope that it is at least a step in the right direction. I listened with interest, in fact I read with interest the comments of Chief Justice Burger. He raised some points that

also should be addressed as far as training of personnel in a number of areas.

If our approach is too expensive, perhaps we can work out some combination, but there are a number of areas that we need to address. This seems to be one that may not be popular, but it is one that is certainly long overdue.

I understand that Mr. Ferris Lucas could not be here. I will submit some questions to him in writing. I thank you both for testifying, and we will see you soon.

Senator BUMPERS. Mr. Chairman, may I ask just one more question, please, before these gentlemen leave?

Sheriff Lucas, I guess I should direct this question to you. Do you arrest very many inmates for violent crimes, and in studying their past find that they may have been paroled prematurely because of the overcrowded conditions at the institution from which they came?

Sheriff LUCAS. Senator, at the present time we have not found that to be disproportionate simply because this has not been a custom in the State of Michigan, and that is the reason why we have the largest walled prison in the country, we generally hold on to our inmates.

However, there is a program presently passed by our legislature and being implemented by our Governor that allows him to free up to 1,000 inmates. When he is advised of an overcrowded situation, within 90 days, he can release up to 1,000 inmates. He is presently implementing that program.

We have a very outspoken prosecutor in one of our counties who will take this matter to court, and who will be keeping very close watch on that program. If you ask me this question 6 months from now, I may be able to answer much more correctly, but at the present time that has not been a problem.

Senator BUMPERS. Thank you very much.

Sheriff LUCAS. Thank you, Senator Dole, and thank you, Senator Bumpers, for this opportunity. I wish you all the luck, and any help that we as sheriffs can be, be sure that we are available.
[Prepared statement of Sheriff William Lucas follows:]

PREPARED STATEMENT OF WILLIAM LUCAS, SHERIFF OF WAYNE COUNTY, DETROIT, MICH.

Mr. Chairman and members of the subcommittee, my name is William Lucas and I am the sheriff of Wayne County, the third largest county in the United States. Wayne County, with the city of Detroit as its major city, generally reflects existing conditions throughout the United States. Also, the State of Michigan is considered among the most advanced States in criminal justice procedures.

My testimony concerns police, court, and other criminal justice facilities that are in need of serious attention.

Over the years it has been my observation, particularly in large metropolitan areas, that old buildings, apartments, offices and schools, for example, are converted for use as police precincts, criminal courts and sometimes, even jails. These buildings were never designed for this purpose and these inadequacies have become even more evident in recent years when they have had to be concerned about securing these buildings from bomb threats, etc.

I think it is one of the grim ironies of our contemporary society that citizens entering public buildings must be searched, that costly security installation, such as security video, flood lights and alarms and even private police hired to patrol the hallways and periphery of police and court buildings.

I recommend that we put to use information obtained by studies sponsored by Law Enforcement Assistance Administration (LEAA), pamphlets by the National

Institute of Corrections (NIC), the Commission on Accreditation for Corrections, and the National Sheriffs' Association to correlate the state of the art that presently exists.

Police buildings and courts are unique and should be well planned to serve their special purpose and that is most certainly the case in the jails. We should consult with competent architects and planners.

In the matter of prisons and jails, investigations into the cause of recent uprisings in prisons and jails throughout the United States and Canada, indicate the major cause has been related to overcrowding. This, of course, has been no surprise to the administration of these facilities who have, for many years, attempted to decentralize major prison facilities. In the State of Michigan, which has a reputation for having an outstanding penal system and which operates one of the largest walled facility in the United States. These eruptions were not totally unexpected. It should be noted that for several years the State of Michigan has attempted to obtain funding to establish smaller, regional prisons in several parts of the State but, because of the State's poor financial condition and also local resistance, the project has been slow to materialize. It continues to be the conditions of our times that our citizens direct that criminals be removed from society but are not interested in providing a proper place for housing and maintaining them.

I therefore recommend that your committee encourage the construction of smaller county jails and prisons and further, that your committee consider as one of its priorities, establishing machinery to educate the citizens of a growing need, not only for these facilities but to consider other less costly alternatives to incarceration.

Senator DOLE. Mr. Geltman, director, Division of Policy & Governmental Relations, National Criminal Justice Association.

Your entire statement will be made part of the record. You may proceed.

STATEMENT OF RICHARD B. GELTMAN, DIRECTOR, DIVISION OF POLICY AND GOVERNMENTAL RELATIONS AND GENERAL COUNSEL, NATIONAL CRIMINAL JUSTICE ASSOCIATION

Mr. GELTMAN. Mr. Chairman, and Senator Bumpers. My name is Richard Geltman, and I am director of the Division of Policy and Governmental Relations as well as general counsel for the National Criminal Justice Association. I thank you very much for your invitation to come before you.

Before addressing S.186, I would like to spend a few moments discussing both the criminal justice facilities problem and why I think it is necessary for Federal funds to be made available. I recognize that there may be some questions about the appropriateness of the Federal Government making those funds available even though there is a substantial problem.

On May 18, you did hear from a large number of State correctional administrators, and I don't want to repeat their testimony, but I do want to say that we recognize that you have heard them. My testimony in its oral as well as its written version does spend a bit of time talking about the corrections facility need.

The National Criminal Justice Association is an association of State officials who are senior level and are responsible for the direction of systemic planning and coordination of the criminal and juvenile justice systems. They work very closely with the Governors of their States, and they have been in the past responsible for the administration of the block grant funds both for the LEAA Crime Control Act program and the Juvenile Justice Act program.

They are concerned about the operation of the total criminal justice system, not merely the corrections system, or the police system, or the court system, but rather the total system. They want to assure that the system works together, rather than divisively.

We are very concerned that when changes are made in one part of the system that the impact on the other parts of the system are considered, and adjustments are made where necessary.

Unfortunately, it does not appear that the impact on corrections is always considered when States make decisions, for instance, in the area of sentencing. So that when there are changes to have determinate or mandatory sentencing, we find that the time served for inmates appears to increase, particularly for those people who have been convicted of serious crimes. We find that there is a commensurate increase in prison and jail populations, and as a result we find that there is overcrowding. Because there is not a commensurate increase in prison and jail construction and renovation, we also now find that we have a prison and jail space shortage problem.

We observe that many States have already diverted as many convicted people as possible into alternatives to institutions. These States have no choice but to create new prison space. I raise this issue because there are certainly a number of people who are concerned about further prison construction. These people feel that it is very necessary that there be a halt to prison construction, and that we find ways to either shorten sentences, to divert to more mental health, or to alcohol detoxification, and so on.

It is our finding that a large number of States have already used alternatives to incarceration to the maximum extent that they can, and there is need for prison construction even after you have explored and utilized as many of these alternatives as you have been able to find.

There is need for correctional construction, but there is a need in the area of police construction as well. The need for the police construction is detailed in my written statement, and has been addressed by Sheriff Lucas, and will be further addressed by Mr. Darwick, I am sure. So I will put that issue aside.

Let me mention the situation with respect to the condition of judicial facilities briefly, and I am referring now to pages 5 and 6 of my statement.

The state of court facilities is similar to the state of police facilities. In some jurisdictions which still employ the magistrate system, there are no facilities to be used. Magistrates not infrequently make ad hoc arrangements to find a place to conduct business.

Court facilities, with the exception of Alaska where the State builds and owns the judicial buildings, are usually planned for, constructed and paid for by local governments. As a result, the condition of court facilities varies considerably from locality to locality.

Although thus far there has been no national survey of the present state of judicial structures, to the best of my knowledge studies have been conducted which indicate that there is a need for renovation and construction of court facilities, and that need is massive.

A preliminary assessment of the court facilities in the State of New York, to which I think Sheriff Lucas also alluded, indicates that the construction costs there could run into the billions of dollars. In 1977, an Illinois study found that of 101 downstate court

houses, 74.3 percent were over 50 years old and 53.5 percent were built before 1900. In Massachusetts, court buildings range from 170 years old to 1 year old. Over 70 percent of the judicial facilities in the Commonwealth of Massachusetts were built before 1900. While conditions across the State vary, the court facilities evidence substantial problems. North Carolina conducted a study in 1978. The study in that State rated 80 percent of the court buildings substandard. Of 96 court houses examined, only 10 percent could be rated adequate to excellent.

It is, therefore, apparent that local governments, particularly in the current economic climate, have deferred expenditures on the maintenance and renovation of existing court structures. Thus, these structures are usually both inefficient and deteriorated.

I think we ought to be concerned not only about how this affects the conduct of judicial business, which affects it in the way of inefficient operations, but I think that we have to be very, very concerned about the appearance of justice this presents to the people who enter those court houses.

There seems to be little question, I think, of the national problem we have in the area of crime, criminal justice, and certainly the need for building new facilities.

National Polls, Chief Justice Burger, as you have mentioned, as well as the President and other national leaders, indicate that attacking the crime problem should be a national priority.

Some people now rank fighting crime equal to the need for building up our national defense, equal to and in some cases exceeding it. Certainly, a number of people will say that we have an equal responsibility for internal defense as we do for our external defense. So there is a problem, and people are placing a priority on it.

We have had money in the past, but the money that is made available to the criminal justice system is primarily tied up in present day operations. We have to make improvements.

LEAA has helped us over the last 12 years. The money is not as substantial as one would think when we take a look at the amount of money that is being spent by State and local governments, all of which is tied up in operations. LEAA money was the only seed money that was used for innovations.

We need money for innovations, for increasing our operational efficiency. We need money to make changes and to build new facilities. Existing resources are tied up in the old operations, but we need to make the transition to new procedures. Once a new building is built, we then may be able to close down the old facilities and save some money. However, in the short term we oftentimes have to pay for the two buildings at the same time, yet the State and the localities just don't have the money to do that.

The bad economic times, particularly in Michigan which was just referred to, is something that is affecting all of us. We have had a recession in 1980 and 1981 and that is now affecting the tax revenues of the State and local governments. There is usually a lag in the economic impact at the State and local level from changes in the private economy, and it is now that places like Michigan, Massachusetts, and Pennsylvania are feeling the lack of dollars.

Unfortunately, we find that people, because of overcrowded conditions and court orders, have had to be released prematurely from prisons. When these people are released, they don't always stay in their home communities or their States. Sometimes those people leave and commit crimes in other States. That is a national problem that we are facing, and not totally localized.

The Federal policies have also led to increased State problems. The Federal Government has decided to decrease its prosecution of bank robbery, interstate auto theft, and small drug offenders and to spend very few resources in trying to catch fugitives.

The result of all of these policy changes is that the burden for catching, prosecuting, adjudicating, and incarcerating a large number of these offenders, who once were subject to Federal jurisdiction, now is left in the hands of State and local officials.

Particularly in the case of bank robbers, this shift in responsibility has had a major impact on the increase in the number of people in State facilities.

Also we have to be concerned about the Federal intervention, and the potential intervention by the Federal Government as a result of the Civil Rights of the Institutionalized Act which you passed a year ago. As a result of Federal court intervention, there are increasing Federal mandates. There is a growing consensus that the Federal Government should invest some money to support mandates they are imposing on the State and local governments.

Finally, the Federal prison system has an interest in State and local facilities coming up to standard because the Federal prison system houses inmates in State and local facilities, some to keep them closer to home, some because they will be appearing in Federal courts in local jurisdictions where there are no nearby Federal correctional institutions. Also, some Federal inmates are placed in local prisons because the Federal officials think that the inmates will be released in a short period of time, and it is best to leave these inmates close to their home communities.

The National Criminal Justice Association supports S. 186.

Senator DOLE. Your time has expired, and we have read that statement. We will make that statement part of the record.

Mr. GELTMAN. Fine, I appreciate that.

Senator DOLE. I would like at this time, because it ties in with the statement you have just made, to have included in the record following your statement a letter from Richard Wertz, Arizona State Justice Planning Agency. I think you know Mr. Wertz. I think at one time he worked closely with Senator Mathias.

He has an interesting letter. He makes a point in his last paragraph about how the jails on Indian reservations are in substandard condition, too. It is his belief that we could strengthen this legislation if jails on Indian reservations were included. So that will be made a part of the record.

I would also like to make a part of the record of the address by Warren E. Burger, Chief Justice of the United States, at the commencement exercises at George Washington University School of Law on Sunday, May 24, 1981. Again, he talks about education and training of not only officials, but also the inmate population, something that might properly be a part of this legislation.

I would ask that the address be made a part of the record.
[Chief Justice Burger's address follows:]

TRANSCRIPT OF REMARKS OF WARREN E. BURGER
CHIEF JUSTICE OF THE UNITED STATES
at the
COMMENCEMENT EXERCISES
for
GEORGE WASHINGTON UNIVERSITY SCHOOL OF LAW

Washington, D.C.
Sunday, May 24, 1981

THE ANCIENT AMERICAN CUSTOM OF COMMENCEMENT SPEECHES IS AN INNOCUOUS ONE THAT HAS DONE VERY LITTLE HARM TO GRADUATES AND MAY HAVE THE BENEFIT OF TEACHING THEM THE VIRTUE OF PATIENCE. AND PARENTS, NOW RELEASED FROM PAYING THE INFLATED RATE OF KEEPING A STUDENT IN COLLEGE, ARE BOUND TO BE IN SUCH A HAPPY MOOD TODAY THAT NO SPEECH COULD DEPRESS THEM!

I HAVE NO TALENT IN FRAMING COSMIC REMARKS ABOUT THE FUTURE WHICH TERMINATE WITH A "HANDING OF THE TORCH" TO THE SURVIVORS OF THREE YEARS OF THE RIGORS OF A LAW SCHOOL. MY TRAINING AS A LAWYER IS TO TRY TO IDENTIFY PROBLEMS AND SEEK SOLUTIONS. THAT WILL NOW BE YOUR ROLE.

IF THERE IS A "TORCH" IN THE PROBLEM I DISCUSS TODAY, IT IS ONE THAT WILL SINGE YOUR HANDS AND BURN YOUR POCKETBOOKS IN THE YEARS AHEAD -- PROBABLY FOR THE REST OF YOUR LIVES. NOT SERIOUS BURNS, BUT SOME.

NOW LET ME TELL YOU WHY IT IS IMPORTANT.

IN MY ANNUAL REPORT TO THE AMERICAN BAR ASSOCIATION RECENTLY, I DISCUSSED THE APPALLING AND INCREASING RATE OF CRIME AND OUR APPARENT INABILITY TO COPE WITH IT. SINCE THEN, TWO PARTICULARLY GROSS CRIMINAL ACTS HAVE SHOCKED THE ENTIRE WORLD, AND UNDERScoreD THE POINT.

I REMINDED THE AMERICAN BAR THAT GOVERNMENTS WERE INSTITUTED BY PEOPLE PRIMARILY FOR THEIR COLLECTIVE PROTECTION. OUR OWN SYSTEM OF GOVERNMENT, ESTABLISHED 200 YEARS AGO -- AS IT HAS EVOLVED -- AFFORDS MORE SAFEGUARDS, MORE PROTECTIONS, AND MORE BENEFITS FOR A PERSON ACCUSED OF CRIME THAN ANY OTHER SYSTEM OF JUSTICE IN THE WORLD. THE RESOLUTION OF GUILT IS MARKED BY CHARACTERISTICS WHICH MAKE OUR SYSTEM UNIQUE IN THE WORLD:

(A) IT EXTENDS OVER A LONGER PERIOD OF TIME THAN IN ANY OTHER JUDICIAL SYSTEM;

(B) IT ALLOWS FOR MORE APPEALS AND MORE RETRIALS THAN ANY OTHER SYSTEM IN THE WORLD;

(C) AFTER ALL APPEALS ARE FULLY EXERCISED, IT ALLOWS -- IN FACT IT ENCOURAGES -- CONTINUED ATTACKS ON THE CONVICTION EVEN THOUGH THAT CONVICTION HAS BECOME PRESUMPTIVELY FINAL;

(D) BUT IN THE FINAL STEP -- THE CORRECTIONAL STAGE -- WE SEEM TO LOSE INTEREST AND OUR PERFORMANCE MUST BE JUDGED A FAILURE.

NO ONE QUESTIONS THAT A CRIMINAL CONVICTION SHOULD ALWAYS BE OPEN TO CORRECT A MISCARRIAGE OF JUSTICE. BUT NO OTHER SYSTEM IN THE WORLD INVITES OUR KIND OF NEVER-ENDING WARFARE WITH SOCIETY, CONTINUING LONG AFTER CRIMINAL GUILT HAS BEEN ESTABLISHED, BEYOND REASONABLE DOUBT, WITH ALL THE SAFEGUARDS OF DUE PROCESS. OUR SYSTEM HAS MOVED THOUGHTFUL, SENSITIVE OBSERVERS WHO ARE DEDICATED TO INDIVIDUAL LIBERTY TO ASK: "IS GUILT IRRELEVANT?"

ON A NUMBER OF OCCASIONS OVER THE PAST 25 YEARS SINCE I HAVE BEEN A MEMBER OF THE JUDICIARY I HAVE UNDERTAKEN TO DISCUSS THE SUBJECT OF CORRECTIONS, CORRECTIONAL PRACTICES, AND CORRECTIONAL INSTITUTIONS.

THAT IS MY SUBJECT TODAY. MY CONCERN ON THIS SUBJECT HAS LED ME TO VISIT MANY SUCH INSTITUTIONS IN THE UNITED STATES AND EVEN MORE IN THE COUNTRIES OF EUROPE.

LOOKING BACK WE SEE THAT OVER THE PAST HALF CENTURY WE HAVE INDULGED IN A CERTAIN AMOUNT OF SELF-DECEPTION WITH EUPHEMISMS, SOMETIMES TO SUGAR COAT THE ACID PILLS OF REALITY, AND SOMETIMES TO EXPRESS OUR HUMANE ASPIRATIONS FOR THOSE WHO BREAK OUR LAWS: "PRISONS" BECAME "PENITENTIARIES" -- PLACES OF PENITENCE -- JUVENILE PRISONS BECAME "REFORM SCHOOLS," AND MORE RECENTLY WE HAVE BEGUN "HALF-WAY HOUSES," WITHOUT BEING QUITE SURE HALF WAY FROM WHAT TO WHAT.

NONE OF THIS IS BAD. I DO NOT REFER TO THESE TERMS TO DISPARAGE THEM OR TO QUESTION THE HUMANE IMPULSES THAT LED US TO SUBSTITUTE THEM FOR THE HARSH TERM "PRISON." YET IT IS NOW BEGINNING TO EMERGE THAT THESE TERMS MAY REVEAL OUR OWN CONFUSION, AND OUR OWN LACK OF DIRECTION TO ACHIEVE THE UNIVERSALLY ACCEPTED OBJECTIVE TO LEND A HELPING HAND TO THOSE WHO ARE CONFINED FOR BREAKING THE LAW. THAT WE ARE CONFUSED, THAT WE LACK DIRECTION, IS NOT SURPRISING FOR WE DEAL HERE WITH AN INTRACTABLE PROBLEM THAT HAS PLAGUED THE HUMAN RACE FOR THOUSANDS OF YEARS.

I CANNOT QUALIFY AS A PROFESSIONAL OR AS AN EXPERT IN THE FIELD OF PENOLOGY OR CORRECTIONS, BUT CLOSE OBSERVATIONS OF CRIMINAL JUSTICE AND CORRECTIONAL PRACTICES FOR 25 YEARS HAVE LEFT ME WITH CERTAIN IMPRESSIONS. SOME OF THOSE IMPRESSIONS HAVE CHANGED AS REALITY OVERTOOK EARLY HOPES AND ASPIRATIONS WHICH I HAD SHARED WITH PENOLOGISTS AND JUDGES.

I HAVE LONG BELIEVED -- AND SAID -- THAT WHEN SOCIETY PLACES A PERSON BEHIND WALLS AND BARS IT HAS A MORAL OBLIGATION TO TAKE REASONABLE STEPS TO TRY TO RENDER HIM OR HER BETTER EQUIPPED TO RETURN TO A USEFUL LIFE AS A MEMBER OF SOCIETY. NOTE, I SAY "TRY," AND I USE THE TERM MORAL OBLIGATION, NOT LEGAL, NOT CONSTITUTIONAL. THE CONSTITUTION PROPERLY MANDATES DUE PROCESS; IT MANDATES MANY PROTECTIVE GUARANTEES, BUT IT MANDATES NOTHING CONCERNING THE SUBJECT OF PUNISHMENTS EXCEPT THAT THEY BE NOT "CRUEL AND UNUSUAL." THE LAWS ASIDE, TO MAKE THESE PEOPLE GOOD CITIZENS IS ALSO FOR OUR OWN PROPER SELF-INTEREST -- NOT JUST THEIRS.

EVEN AS RECENTLY AS 20 OR 25 YEARS AGO, I SHARED THE HOPES OF GREAT PENOLOGISTS LIKE JAMES V. BENNETT, TORSTEN ERIKSSON OF SWEDEN, AND DR. GEORGE STURUP OF DENMARK, AND MANY OTHERS THAT ENLIGHTENED CORRECTIONAL PROGRAMS WOULD CHANGE AND REHABILITATE PRISONERS. WITH MANY OTHERS, I HAVE HAD TO RECOGNIZE -- TO MY SORROW -- THAT, BROADLY SPEAKING, PROSPECTS FOR REHABILITATING CONVICTED PERSONS IS A GREAT DEAL LESS PROMISING THAN THE PRESUMED EXPERTS HAD THOUGHT.

TO DO ALL THE THINGS THAT MIGHT HAVE SOME CHANCE OF CHANGING PERSONS CONVICTED OF SERIOUS CRIMES WILL COST A GREAT DEAL OF MONEY AND 1981 IS HARDLY THE YEAR IN WHICH TO PROPOSE LARGE PUBLIC EXPENDITURES FOR NEW PROGRAMS TO CHANGE THE PHYSICAL PLANTS AND INTERNAL PROGRAMS OF PENAL INSTITUTIONS. SO WHAT I AM ABOUT TO PROPOSE ARE PROGRAMS OF RELATIVELY MODEST FISCAL DIMENSIONS WHICH I BELIEVE WILL HELP -- BUT WITH NO GUARANTEED RESULTS.

ESTIMATES ON THE COST OF CRIMINAL ACTIVITY ARE NECESSARILY SPECULATIVE. HOW SHOULD WE MEASURE MURDER, RAPE OR ASSAULT? BUT THOSE WHO HAVE STUDIED IT GIVE ESTIMATES AS HIGH AS OVER 100 BILLION DOLLARS -- BILLION -- NOT MILLION. THIS IS REFLECTED IN A RANGE OF WAYS:

- * THE DIRECT LOSS SUFFERED BY THE VICTIMS,
- * INCREASED INSURANCE RATES,
- * INCREASED SECURITY BY HOME-OWNERS AND BUSINESSES,
- * INCREASED POLICE DEPARTMENTS,
- * INCREASED COURT FACILITIES, AND
- * INCREASED PUBLIC ASSISTANCE TO VICTIMS AND THEIR FAMILIES.

TO APPROXIMATE IDEAL SOLUTIONS WOULD COST A GREAT DEAL OF MONEY AND REQUIRE A VERY LONG-TERM PROGRAM. BUT WE SHOULD NOT WAIT UNTIL WE CAN DO THE WHOLE JOB -- THE IDEAL -- HOWEVER THAT MAY BE DEFINED. WE SHOULD BEGIN WHERE WE CAN, AT A LEVEL WE CAN AFFORD. SMALL STEPS ARE BETTER THAN NONE.

TWO STEPS COULD REASONABLY BE TAKEN WITHIN THE RANGE OF AFFORDABLE EXPENDITURES. I RELATE THEM CHIEFLY BECAUSE THEY ARE AFFORDABLE IN AN ECONOMIC SENSE -- AND AFFORDABLE IN TERMS OF THE PSYCHOLOGY AND THE POLITICAL AND ECONOMIC REALITIES OF 1981. THESE PROPOSALS ARE CLOSELY RELATED, BOTH BEARING ON TRAINING AND EDUCATION -- TRAINING OF THE INMATES AND TRAINING OF THE KEEPERS.

IN 25 YEARS ON THE BENCH, I HAVE OBSERVED AND DEALT WITH MORE CRIMINAL CASES, AND CASES DEALING WITH CONDITIONS INSIDE PRISONS, THAN I CAN ESTIMATE. I HAVE VISITED MANY PENAL INSTITUTIONS AND I ASSURE YOU A PRISON IS NOT A PLEASANT PLACE, IT IS NOT EVEN A COMFORTABLE PLACE. IT PROBABLY CAN NEVER BE MADE EITHER COMFORTABLE OR PLEASANT; BUT NEITHER PLEASURE NOR COMFORT IS THE PRIMARY OBJECT OF THE ENTERPRISE. AT ITS BEST, IT IS BARELY TOLERABLE AND EVEN AT THAT LEVEL A PENAL SYSTEM IS ENORMOUSLY COSTLY -- AND IT IS PAID FOR PARTLY BY THE CRIME VICTIMS ON THE OUTSIDE.

IN ALL TOO MANY STATE PENAL INSTITUTIONS THE PERSONNEL -- THE ATTENDANTS AND GUARDS -- ARE POORLY TRAINED AND SOME ARE NOT TRAINED AT ALL FOR THE DIFFICULT AND SENSITIVE ROLE THEY SHOULD PERFORM. THERE IS AN ASTONISHING RATE OF TURNOVER OF GUARDS AND CORRECTIONAL PERSONNEL. ONE STATE, WIDELY REGARDED AS HAVING AN ENLIGHTENED CORRECTIONAL SYSTEM, HAS A 40 PERCENT ANNUAL TURNOVER. ONE STATE HAS 54 PERCENT, ONE 60 PERCENT, ANOTHER 65 PERCENT, AND ANOTHER 75 PERCENT TURNOVER.

HOW CAN ANY HUMAN ENTERPRISE BE EFFECTIVE WITH THAT RATE OF TURNOVER OF KEY PERSONNEL? THE TURNOVER REFLECTS, IN PART, THE APPALLINGLY LOW SALARIES PAID. AND I VENTURE TO SAY THAT THERE IS A CORRELATION BETWEEN THE LOW SALARY, THE RAPID TURNOVER AND THE AMOUNT OF TRAINING.

LONG AGO I OBSERVED THE MARKED CONTRAST BETWEEN THE SECURITY PERSONNEL IN THE PRISONS OF NORTHERN EUROPEAN COUNTRIES AND THE PRISONS IN OUR COUNTRY. IN NORTHERN EUROPE, GUARDS ARE CAREFULLY SCREENED AND HIGHLY TRAINED; THAT IS AS IT SHOULD BE FOR THEY ARE DEALING WITH ABNORMAL PEOPLE IN A VERY DEMANDING SETTING. WITHOUT SPECIAL TRAINING, PRISON PERSONNEL CAN BECOME PART OF THE PROBLEM RATHER THAN PART OF THE SOLUTION.

AN IMPORTANT AND LASTING CONSEQUENCE OF LACK OF TRAINED PERSONNEL IS THE IMPACT ON THE INMATE -- THE INDIVIDUAL INMATE -- WHO CONTINUES HIS HOSTILITY TOWARD SOCIETY, TOWARD FELLOW INMATES AND TOWARD PRISON PERSONNEL. THE "KEEPERS" COME TO BE THE IMMEDIATE SYMBOLS OF THE SOCIETY THAT KEEP THEM CONFINED. UNFORTUNATELY, JUDICIAL HOLDINGS HAVE NOT ALWAYS DISCOURAGED THIS WARFARE. MORE OFTEN THAN NOT, INMATES GO BACK INTO SOCIETY WORSE FOR THEIR CONFINEMENT. OUR DREAMS AND HOPES CONCERNING REHABILITATION HAVE NOT BEEN REALIZED.

I BEGIN WITH STEP ONE.

AT PRESENT, THERE IS NO SINGLE, CENTRAL FACILITY FOR THE TRAINING OF PRISON AND CORRECTIONAL PERSONNEL, PARTICULARLY THOSE AT THE LOWER AND MIDDLE LEVELS WHO WORK WITH PRISONERS ON A ONE-TO-ONE BASIS. I DISCUSSED THIS SUBJECT IN 1971 AT THE WILLIAMSBURG CONFERENCE ON CORRECTIONS AND THIS LED TO THE CREATION OF THE NATIONAL INSTITUTE OF CORRECTIONS WHICH HAS CONDUCTED REGIONAL SEMINARS TO TRAIN MIDDLE AND UPPER ECHELON PRISON PERSONNEL SINCE 1972.

THE OPERATION OF A CORRECTIONAL OR PENAL INSTITUTION IS NO PLACE FOR AMATEURS. IT CALLS FOR SUBSTANTIAL PROFESSIONAL TRAINING AND THE HIGHEST ORDER OF SENSITIVITY, BEGINNING AT THE GUARD LEVEL. WE NEED LOOK ONLY TO THE VOLUME OF COMPLAINTS, THE DISORDERS, AND RIOTS IN THESE INSTITUTIONS OVER THE PAST DECADE TO FIND ABUNDANT EVIDENCE OF THIS. IF THE ONLY PROBLEM WERE THE CONTROL OF DISORDERS IT MIGHT BE MANAGEABLE, EVEN IF ONLY BY USE OF RAW FORCE, BUT FORCE IS NOT THE SOLUTION. IN A LIMITED SENSE THESE INSTITUTIONS CAN BE COMPARED WITH THE PRODUCTION LINES OF DETROIT: RECIDIVISM IS THE PENOLOGISTS WORD FOR "PRODUCT RECALL." WHEN PRISONS TURN OUT "PRODUCTS" WITH A HIGH RATE OF RECALL WE HAVE DISASTER. AND OUR CURRENT RATE OF RECALL -- RECIDIVIST OFFENDERS IS A DISASTER. AND YOU WILL INHERIT THAT DISASTER.

UNDER THE LEADERSHIP OF NORMAN CARLSON, OF THE FEDERAL BUREAU OF PRISONS, AND ALLEN BREED, DIRECTOR OF THE NATIONAL INSTITUTE OF CORRECTIONS, MUCH HAS BEEN DONE TO IMPROVE CONDITIONS. BUT MORE IS NEEDED.

THE BEST OF PRISON ADMINISTRATORS CANNOT CHANGE SOME OF THE NEGATIVE CONDITIONS UNLESS THOSE IN THE HIGH-TURNOVER, LOWER ECHELONS ARE CAREFULLY SCREENED, WELL-TRAINED, AND REASONABLY PAID. PSYCHOLOGICAL TESTING OF APPLICANTS IS IMPERATIVE TO SCREEN OUT PEOPLE WITH LATENT TENDENCIES OF HOSTILITY. THE EXISTING STATUTORY PROHIBITIONS ON PSYCHOLOGICAL SCREENING MUST BE REEXAMINED. TODAY, THOSE LOWER POSITIONS IN MOST OF THE STATES ARE GENERALLY NOT PAID ADEQUATELY ENOUGH TO GET MINIMALLY QUALIFIED PEOPLE.

ONE OF THE GREAT, AND PERHAPS MOST LASTING, CONTRIBUTIONS OF THE FEDERAL BUREAU OF INVESTIGATION WAS THE FOUNDING OF THE NATIONAL POLICE ACADEMY BY J. EDGAR HOOVER. FOR OVER 45 YEARS, THE F.B.I. HAS GIVEN ADVANCED TRAINING TO THOUSANDS OF STATE AND LOCAL POLICE PERSONNEL. THAT TRAINING HAS VASTLY IMPROVED THE QUALITY OF LAW ENFORCEMENT IN AMERICA, BOTH IN TERMS OF EFFICIENCY AND THE KIND OF LAW ENFORCEMENT A DECENT SOCIETY SHOULD ACHIEVE. A SHERIFF, CONSTABLE OR POLICEMAN ON THE STREET CANNOT AVOID ERRORS UNDER THE FOURTH AMENDMENT, FOR EXAMPLE, IF HE OR SHE HAS NOT BEEN TRAINED TO APPRECIATE THE SENSITIVE AND ELUSIVE NUANCES OF THAT RULE OF LAW. THE COST OF CREATING AND MAINTAINING THE F.B.I. ACADEMY IS BUT A TINY FRACTION OF THE BENEFITS IT HAS CONFERRED.

THE TIME IS RIPE TO EXTEND THE FINE WORK BEGUN IN 1972 BY THE NATIONAL INSTITUTE OF CORRECTIONS, AND WE SHOULD PROCEED AT ONCE TO CREATE A NATIONAL ACADEMY OF CORRECTIONS TO TRAIN PERSONNEL MUCH AS THE F.B.I. HAS TRAINED STATE AND LOCAL POLICE. THIS IS ESPECIALLY NEEDED FOR THE STATES WHICH HAVE NO REAL TRAINING RESOURCES AVAILABLE. THE ACADEMY SHOULD ALSO PROVIDE TECHNICAL ASSISTANCE TO STATE AND LOCAL INSTITUTIONS ON A CONTINUING BASIS.

THE COST OF ESTABLISHING SUCH AN INSTITUTION, PARTICULARLY IF IT COULD BE MADE AS AN ADJUNCT AT THE F.B.I. ACADEMY AT QUANTICO IS NOT GREAT. THE PHYSICAL FACILITIES OF CLASSROOMS AND DORMITORIES COULD BE USED INTERCHANGEABLY BY BOTH THE F.B.I. POLICE TRAINING PROGRAM AND THE CORRECTIONAL ACADEMY. I AM RELIABLY INFORMED THAT THE FACULTY OF SUCH AN INSTITUTION COULD BE MADE UP OF NOT MORE THAN A DOZEN PERMANENT STAFF WITH THE BALANCE OF THE TRAINING CONDUCTED BY AN AD HOC FACULTY OF SPECIALISTS DRAWN FROM THE STATE AND FEDERAL SYSTEMS. ALTERNATIVELY, THE UNITED STATES COULD ACQUIRE THE FACILITIES OF A SMALL, CENTRALLY LOCATED COLLEGE WHICH IS CLOSING ITS OPERATIONS. SUCH A FACILITY COULD READILY BE ADAPTED TO THIS PURPOSE.

NOW, STEP TWO.

THE SECOND STEP FOR WHICH I WOULD URGE CONSIDERATION IS ONE THAT WOULD NEED TO BE PHASED OVER A LONGER PERIOD. WE SHOULD INTRODUCE OR EXPAND TWO KINDS OF EDUCATIONAL PROGRAMS:

THE FIRST WOULD BE TO MAKE CERTAIN THAT EVERY INMATE WHO CANNOT READ, WRITE, SPELL AND DO SIMPLE ARITHMETIC WOULD BE GIVEN THAT TRAINING -- NOT AS AN OPTIONAL MATTER BUT AS A MANDATORY REQUIREMENT. THE NUMBER OF YOUNG, FUNCTIONAL ILLITERATES IN OUR INSTITUTIONS IS APPALLING. WITHOUT THESE BASIC SKILLS, WHAT CHANCE DOES ANY PERSON HAVE OF SECURING A GAINFUL OCCUPATION WHEN THAT PERSON IS RELEASED AND BEGINS THE SEARCH FOR EMPLOYMENT -- WITH THE BUILT-IN HANDICAP OF A CRIMINAL CONVICTION? TO THOSE WHO VIEW THE MANDATORY ASPECT AS HARSH -- AND SOME WILL -- I SUGGEST THAT THE TOTAL WORK AND STUDY HOURS OF INMATES BE NO GREATER THAN WE DEMAND OF THE 15,000 YOUNG AMERICANS WHO ARE CADETS AT OUR SERVICE ACADEMIES -- OR LAW STUDENTS!

FOCUSING ON THE LONGER TERM PRISONER, THE SECOND PHASE OF THIS EDUCATIONAL PROGRAM WOULD REQUIRE A LARGE EXPANSION OF VOCATIONAL TRAINING IN THE SKILLED AND SEMI-SKILLED CRAFTS. SO THAT A PRISONER WOULD NOT LEAVE THE INSTITUTION WITHOUT SOME QUALIFICATIONS FOR EMPLOYMENT IN THE CONSTRUCTION, MANUFACTURING OR SERVICE INDUSTRIES, THESE VOCATIONAL TRAINING PROGRAMS SHOULD ALSO BE MANDATORY. AN INMATE WHO DECLINES TO COOPERATE MUST BE MOTIVATED TO DO SO BY INCENTIVES, INCLUDING SHORTENING THE SENTENCE. JUST AS GOOD BEHAVIOR CREDIT IS NOW ALLOWED TO REDUCE SENTENCES, WE SHOULD ALLOW CREDIT ON SENTENCES FOR THOSE WHO COOPERATE. WE SHOULD HELP THEM TO LEARN THEIR WAY OUT OF PRISON. REWARDS AND PENALTIES ACCOMPANY THE LIVES OF THE CADETS I SPOKE OF -- AND OF LAW STUDENTS. WHY SHOULD THIS NOT APPLY TO PRISONERS?

A FEW DAYS AGO I VISITED WITH W. CLEMENT STONE, A FINE AMERICAN BUSINESS LEADER, WHO HAS DEVOTED MUCH OF HIS TIME AND MONEY TO IMPROVE THE LOT OF PRISON INMATES. HE HAS WRITTEN AND LECTURED ON THE CRUCIAL ROLE OF MOTIVATION IN THE LIVES OF PEOPLE. PRISONERS ARE PEOPLE AND WE MUST TRY TO MOTIVATE THEM, TRY TO TRAIN THEM, TRY TO INSTILL THE SELF-ESTEEM THAT IS ESSENTIAL TO ANY KIND OF NORMAL LIFE. WE MAY SUCCEED WITH ONLY A SMALL PERCENTAGE, BUT WE MUST TRY.

ONE OF THE INSTITUTIONS WHICH IMPRESSED ME IN MY VISITS TO CORRECTIONAL FACILITIES OVER THE LAST 25 YEARS WAS A JUVENILE PRISON IN EUROPE. IT HAD ON ITS WALLS IN THE MAIN ENTRY LOBBY FOUR STATEMENTS WHICH ADDED UP TO A CARROT AND A STICK. HERE IS THE FIRST THING THE NEW INMATE SEES WHEN HE ARRIVES TO BEGIN HIS TERM:

FIRST: "YOU ARE HERE BECAUSE YOU NEED HELP";

SECOND: "WE ARE HERE TO HELP YOU";

THIRD: "WE CANNOT HELP YOU UNLESS YOU COOPERATE";

FOURTH: "IF YOU DON'T COOPERATE, WE WILL MAKE YOU."

SOMEONE MAY SAY THAT THIS IS A HARSH PROPOSITION TO PUT TO THE PEOPLE WHO ARE UNFORTUNATE ENOUGH TO BE IN PRISON. BUT I SUGGEST TO YOU THAT AMONG THE FACTORS WHICH WOULD EXPLAIN THE PRESENCE OF THAT PERSON AT THAT PLACE AT THAT TIME, IS THAT HE OR SHE HAS NOT BEEN SUBJECT TO THE DISCIPLINE CALLING FOR ADHERENCE TO CERTAIN STANDARDS OF WORK AND LEARNING. MOTIVATION IS ABSENT, BUT EVEN SMALL SUCCESSES CAN SPARK MOTIVATION, AND THAT KIND OF CARROT AND STICK PROGRAM PROVIDES MOTIVATION.

WE KNOW THAT PEOPLE WHO HAVE NEITHER LEARNED TO LEARN NOR LEARNED TO WORK HAVE LITTLE BASIS FOR THE SELF-ESTEEM OR THE ESTEEM FOR OTHERS THAT IS SO ESSENTIAL TO THE HUMAN EXISTENCE.

THERE IS NOTHING NOVEL IN WHAT I AM PROPOSING. THERE ARE SKILLED PEOPLE WHO HAVE THOUGHT ABOUT THESE PROBLEMS FOR A LONG TIME WHO STAND READY, WILLING AND ABLE TO IMPLEMENT THEM IF ONLY THE GOVERNMENT WILL ACT IN THE AREAS IN WHICH ONLY A NATIONAL GOVERNMENT CAN ACT EFFICIENTLY.

THESE ARE TWO VERY SMALL STEPS IN THE WHOLE SCHEME OF THIS MELANCHOLY PICTURE OF CRIME IN AMERICA. THEY ARE NOT NECESSARILY LOGICAL STARTING POINTS, BUT THEY ARE A BEGINNING. THE WAY TO GET STARTED ON ANY SOLUTION IS TO FACE THE PROBLEM AND TAKE ONE OR TWO STEPS -- HOWEVER SMALL.

EVEN IN THIS DAY OF NECESSARY BUDGET AUSTERITY, I HOPE THAT THE PRESIDENT AND THE CONGRESS, IN WHOSE HANDS SUCH MATTERS MUST REST, WILL BE WILLING TO CONSIDER THESE TWO MODEST, BUT IMPORTANT STEPS. NO ONE CAN GUARANTEE RESULTS, BUT IF WE ACCEPT THE MORAL PROPOSITION THAT WE ARE OUR BROTHERS' KEEPERS AND THAT THERE IS A DIVINE SPARK IN EVERY HUMAN BEING -- HARD AS THAT IS TO BELIEVE AT TIMES -- WE MUST TRY.

FOR THOSE WHO ARE RELUCTANT TO FINANCE MORAL PROPOSITIONS, THE HARD ECONOMICS OF THE COST OF CRIME MAY OFFER GREATER INDUCEMENT. FOR YET OTHERS, THESE PROGRAMS OFFER THE COMBINED APPEAL OF CHRISTIAN CHARITY AND NEW ENGLAND FRUGALITY.

X X X X X X

THE "TORCH" IS NOW YOURS. I HOPE IT SINGS YOU ENOUGH WHILE YOU EARN LARGE FEES FROM AFFLUENT CLIENTS, TO ASSURE YOUR SUPPORT FOR THESE STEPS, BECAUSE THE CONSEQUENCES OF THE PRESENT SYSTEM WILL FALL ON YOU AND ON YOUR CHILDREN.

Senator DOLE. With reference to S. 186 itself, I have read your statement, and I appreciate the support.

Do you believe that we should limit S. 186 to prisons and jails, rather than the other areas we mention in S. 186?

Mr. GELTMAN. I think that it is appropriate that money be available to both police agencies and court agencies. As I indicated, there are probably over 20,000 individual police departments in the country, and there may be as many as 50,000 buildings, and some of the buildings date back to before the Civil War.

Sheriff Lucas mentioned that he has a great amount of familiarity with the situation in New York, where he had been an officer for 8 years, and oftentimes people used former buildings utilized by education departments, or whatever. I think there is need in all parts of the system, a significant need in all parts of the system for money for construction.

Senator DOLE. In S. 186, we call for comprehensive planning or master plans which must be developed as a condition precedent for obtaining Federal funds. You and your organization have been in the forefront of the development of comprehensive planning for criminal justice.

Are the provisions in S. 186 with reference to planning meaningful, or are they more redtape, as you view it, in order to get Federal money?

Mr. GELTMAN. I think it is very necessary. One of the things I think we find is that, particularly when you do physical planning as opposed to social service planning, you have a very high degree of utilization.

Particularly in the area of construction, there is a long leadtime to find construction sites, to get the money, to plan the facilities and to construct them. Master plans, I think, make a great deal of sense, particularly at the State level where you are talking about a large number of facilities operated and owned by the State, and where there is State superintendence over local institutions, if nothing else, by way of standard setting. I think it does make a large amount of sense to develop a plan which meets local needs.

I am somewhat concerned about the provision, however, that there be a comprehensive plan submitted to the Federal Government. Maybe it would be more appropriate if the submission were changed to an application. I think that the change would have a substantive impact as well as a nominal one. I think in subsections 2 and 5 of section 203(a), there is a call for submitting major description of the activities to be performed to the Federal Government. I am not sure that those are not better retained at the State level for its own use, and maybe brief descriptions submitted to the Federal level. I would also be concerned if there was a substantial amount of time spent at the Federal level for review and approval of the local comprehensive plans that I would rename applications.

Senator DOLE. Thank you very much, Mr. Geltman.

Senator BUMPERS. In this bill, S. 186, there is a provision on the formula for distributing the money. It is basically a population formula. Do you agree with that, or do you think it ought to be based more on a demonstrated need?

Mr. GELTMAN. If I recall the proposed statute, I think it is really a two-part formula. I think 50 percent of the formula is based upon

population. The other 50 percent of the formula is based upon criminal justice activities.

Senator BUMPERS. That is right.

Mr. GELTMAN. I think it is very hard to base something on need.

Senator BUMPERS. Some States have a much higher prison population as a percentage of the total population of the State than do other States. Some of us are fairly peaceful, and some of us are fairly violent.

Mr. GELTMAN. I think there are also different State policies about how you deal with violent people. Some States, I think, incarcerate a great deal more than others.

I think what I am concerned about, part of it is political and part of it is substantive, is that I have not found that the formulas, no matter how one devises the formulas, change very much in the long run in how the money gets allocated.

I take this from the experience of the LEAA program when we once had a formula based primarily on population, to the present Justice System Improvement Act, that was passed in 1979 but has yet to be funded, which has an extremely complex formula. Yet, the end result, I think, is that the complex formula is not substantially different in effect from the State population formula.

I think the more complex the formula becomes, the more politically difficult it is for you and us to explain to everybody how and where the money is going. It results in political problems, and people talking about redtape. I think it is best to use the simplest formula you can in order to distribute the funds, because I don't think it makes any substantial difference in how the funds get distributed in the end.

Senator BUMPERS. Thank you.

Senator DOLE. Thank you, Mr. Geltman.

[Prepared statement of Mr. Geltman and letter from Mr. Wertz follow:]

PREPARED STATEMENT OF RICHARD B. GELTMAN, DIRECTOR,
DIVISION OF POLICY AND GOVERNMENTAL RELATIONS AND
GENERAL COUNSEL, NATIONAL CRIMINAL JUSTICE ASSOCIATION

Mr. Chairman and distinguished members of the Committee;

My name is Richard B. Geltman, and I am Director of the Division of Policy and Governmental Relations as well as General Counsel for the National Criminal Justice Association*.

Before addressing S. 186, "the Criminal Justice Construction Reform Act", introduced by Senator Dole, I would like to spend a few moments discussing why money must be made available to renovate and construct criminal justice facilities and why it is appropriate for the federal government to contribute more of the needed dollars.

I. Lack of Adequate Criminal Justice Facilities

Since 1972, State prison populations have risen beyond our expectations. On January 1, 1980, the total number of adults in State prisons reached 275,850 inmates, of which 6,436 were sentenced felons backed-up in county jails due to overcrowding in State facilities.

To obtain a better understanding of corrections facility problems, I have examined data on the correctional institutions in the Commonwealth of Virginia. The Virginia State Corrections Administrator did not appear before you on May 18, 1981.

Virginia, like many States, is using some very old facilities. The oldest State facility is the State penitentiary built in 1800 and still

* The National Criminal Justice Association represents the full-time senior level employees of the fifty-seven States, whose responsibilities include the direction of systemic criminal and juvenile justice planning and/or coordination. These individuals are most often the directors of the State and territorial criminal justice planning agencies (SPAs) created by the States and territories to plan for and encourage improvements in the administration of adult and juvenile justice systems. The SPAs have been designated by their respective jurisdictions to administer federal financial assistance programs created by the Omnibus Crime Control and Safe Streets Act of 1968, as amended, and the Juvenile Justice and Delinquency Prevention Act of 1974, as amended. In essence, the States, through the SPAs, are assigned the central role under the two Acts.

being used to house 986 prisoners. The James River Correctional Center, constructed in 1894, holds 270 inmates.

During 1980, the Virginia State institutions had 8,019 assignable beds excluding 866 special purpose beds. By March of 1981, there were 8,315 felons committed to State institutions. In addition, there were 1,676 convicted persons awaiting transfer from local to State facilities. Thus, there were 1,972 convicted persons for which there were not assignable beds.

The average monthly population for Virginia State institutions in 1980, was 8,093, increasing to 8,365, in April 1981. Clearly, the prison population in Virginia is increasing and the facilities are overcrowded.

To operate at rated capacity the system needs 9,542 beds to handle its total population. By 1990 it will need 12,987 beds according to current projections. Assuming no upgrading of present facilities or closing of present ones beyond those closings already planned, and taking onto account the five new State facilities planned or under construction, Virginia will be 4,776 beds short by 1990 if present commitment trends continue. If it is to meet that need, the State will have to spend \$191,000,040 (in 1980 dollars) for capital outlays on correctional construction over the next decade.

If Virginia were to try to meet American Corrections Association standards at its present facilities, it would lose 4,831 beds from its present capacity. Add this number to the projected 1990 shortfall mentioned above and you see that the State would face a deficit of 8,156 beds in less than ten years.

The cost of necessary renovation to reach single cell occupancy in presently operating State facilities would require an outlay for renovation of \$127,700,000 (in 1980 dollars). The cost of the 8,156 new beds would be \$326,240,000 (in 1980 dollars), for a total outlay of \$453,940,000 (in 1980 dollars) by 1990.

Virginia currently has two 500 bed medium security institutions under construction, with plans and sites selected for three more. These five will replace two trailer park installations, a converted warehouse, a converted chicken house, a converted mental health institution and temporary facilities to house road gangs.

In the Commonwealth's 1982-1984 biennium budget request, the Virginia Department of Corrections has asked for \$40,575,000 for new construction in the first year and \$39,900,000 in the second year. Most of these funds will be used for the five medium security institutions mentioned earlier. For renovations at two existing facilities, it requested \$17,595,000 in the first year, but it has requested nothing for renovation in the second year. The Governor has not yet reacted to the Department's budget request.

Since 1969, the courts at all governmental levels in the United States have been involved in resolving such issues as the mix and security of correctional institutional populations, the maximum rated capacity of institutions and the maximum populations of such institutions. As of March 1978, eighty-one (81) correctional institutions throughout the nation had come under court order. These orders included:

- 25 for overcrowding,
- 19 for staff practices,
- 18 related to health conditions,
- 11 related to proper sanitation,
- 12 related to food,
- 21 related to medical care,
- 20 on the provision of due process, and
- 14 related to access to courts.

(Some institutions are under multiple orders.)

What I've set out is the picture of the condition of State institutions. What do local corrections facilities look like?

Virginia has 96 jails in operation. The State pays for part of the salaries of local personnel and local facility operation. The jails are in sad shape. Of the 96 jails, only

- 48 have classification services,
- 55 have medical services,
- 37 have recreational services,
- 48 have day space or other areas, and
- 64 provide visiting privileges.

About 10 of the 96 jails were built before 1900. Where jails once held individuals for only up to 30 days, they now hold them for up to twelve

months. The State has projected that by 1984, there will be 5,553 beds available for a projected population of 6,941 individuals. This leaves the localities with a shortfall in capacity of 1,388 beds.

As of July 1, 1980, Virginia had 1,379 prisoners backed up in local facilities that should have been transferred to State facilities. So far in the period of January 1 through March 31, 1981, there is an increase of 33% in the individuals waiting transfer to State facilities indicating a general increase in the local populations.

Police and court facilities are also under heavy pressure due to increases in reported crime and population shifts to sun belt and energy developing States. Thus, in many areas increasing demands are outstripping existing resources. While law enforcement and judicial agencies have not suffered the intervention of the federal courts for inadequate facilities as have correctional agencies, the facilities of the police and courts are also subject to the problems of age and insufficient capacities.

There are over 20,400 State and local police departments in this country. Although there are no exact counts of the number of law enforcement facilities utilized, my best guess is that there are more than 50,000 buildings in use. Very few of these buildings have been built in the last few years. Some were built, as in New York City, just after the Civil War, are still in use and are in decrepit condition. Indications are that those portions of facilities that are committed to lock-up and training are in the worst condition. The conclusion reached by a number of police experts is that current law enforcement facilities are inadequate for professional police. The inadequacies include: lack of security leading to danger to law enforcement officers and detainees, depressing environments leading to poor officer morale, and inadequate and poorly designed space leading to departmental operational inefficiencies.

The state of court facilities is similar to the state of police facilities. In some jurisdictions which still employ the magistrate system, there are no facilities to be used. Magistrates not infrequently make ad hoc arrangements to find a place to conduct business.

Court facilities, with the exception of Alaska where the State builds and owns the judicial buildings, are usually planned for, constructed and

paid for by local governments. As a result, the condition of court facilities varies considerably from locality to locality. Although thus far there has been no national surveys of the present state of judicial structures, to the best of my knowledge, studies that have been conducted indicate that the need for renovations and construction of court facilities is massive. A preliminary assessment of the court facilities in the State of New York, indicates that construction costs there could run into the billions of dollars. In 1977, an Illinois study found that of 101 down-state court houses, 74.3% were over 50 years old and 53.5% were built before 1900. In Massachusetts, court buildings range from 170 years old to one year old. Over 70% of the judicial facilities in the Commonwealth of Massachusetts were built before 1900. While conditions across the State vary, the court facilities evidence substantial problems. North Carolina conducted a study in 1978. That State rated 80% of its court buildings substandard. Of 96 court houses examined, only 10% could be rated adequate to excellent.

It is apparent that local governments, particularly in the current economic climate, have deferred expenditures on the maintenance and renovation of existing court structures. Thus, these structures are usually both inefficient and deteriorated. As a result, not only does the conduct of judicial business suffer but the appearance of justice does as well.

II. Necessity of Federal Assistance

Crime is a national problem of high priority. You have already heard references to the priority placed by the American public on reducing violent crime. The Chief Justice of the United States, the President and the Attorney General properly gave major prominence to this issue earlier this year. These high officials and the people of this country expect the federal government to play a significant role (a) in attacking the problem directly with actions consistent with the proper federal role and responsibilities and (b) in assisting State and local units of government.

State and local units of government have the primary governmental responsibility for dealing with the violent crime problem. Some of these

units of government do not even have sufficient resources to maintain their current level of operations. Others can not meet the new demands being placed upon them by apparently escalating violent crime rates and the demands by federal courts concerning proper treatment of institutionalized persons. Few localities have the discretionary funds on their own to make the up-front investments necessary to improve operations of criminal justice agencies even if long-term efficiencies will result, or to experiment with innovative programming. The increasing demands placed on State and local criminal justice agencies is coincident with a resource shortfall that can be projected for FY 1982 and FY 1983 by State and local governments. The combination of the recession of 1980-1981 and the State and local tax limitation initiatives makes it imperative that federal financial criminal justice assistance be available in FY 1982.

Unfortunately, in a large and growing number of States and localities there are no alternatives to incarceration for an ever increasing group of convicted criminal offenders. Moreover, many of these same States and localities do not have the resources to make available sufficient beds in correctional facilities to house these offenders within constitutional bounds. As a result, criminals must be prematurely released from incarceration, which leaves them free to commit further violent acts against society. The prematurely released persons who commit additional offenses do not limit their criminal activity to one geographical jurisdiction. A person released in the District of Columbia will have free rein to commit crimes in Maryland, Virginia or Kansas. Premature release from a correctional institution is a national problem as well as an individual State problem.

It is not just coincidental that while federal prison populations have gone down, State and local prison populations have been rising. The federal government is partly responsible, and should bear part of the burden by paying for the necessary additional local prison space. Federal prosecution policies which have shifted federal resources to white collar crime, organized crime, fraud and public corruption, as well as the focus on "quality" cases, mean that many criminal offenders subject to processing under concurrent jurisdiction must now be prosecuted, adjudicated and in-

carcerated by State and local authorities. Thus, large numbers of bank robbers, interstate auto thieves and drug offenders, who once would have been incarcerated in federal facilities are now maintained in State correctional institutions.

The federal government through the federal courts and the Department of Justice under the authority of the Civil Rights of the Institutionalized Persons Act have intervened and will intervene to mandate that States and localities upgrade their correctional facilities. If the federal government is going to mandate local correctional improvements, it should contribute resources to meet the costs of those mandates.

The federal government and the Federal Bureau of Prisons have a vested interest in seeing that State and local correctional facilities meet constitutional standards. State and local correctional facilities house federal detainees, federal prisoners with short sentences and federal minimum security prisoners. Contracting with State and local correctional agencies for the use of local facilities is much cheaper for the Bureau and permits the prisoners to be in reasonable proximity to their families and home communities.

III. S. 186 - Criminal Justice Construction Reform Act

The National Criminal Justice Association sent copies of S. 186's predecessor filed in the 96th Congress to all States for their comment. We have already submitted the 22 responses we received to the Subcommittee for the record. Most of those comments were very favorable.

The National Criminal Justice Association supports S. 186. It should be part of a larger criminal justice assistance package that provides support for tested programs to aid police, court and correctional agencies, research and statistical collection and analysis. Federal financial assistance is sorely needed as demonstrated in our statement and in the statements of the other witnesses from whom you have heard.

The National Criminal Justice Association is in favor of the use of alternatives to incarceration for appropriate individuals. However, we recognize, as pointed out on May 18, 1981, by Director Johnson of Michigan and Director Farrier from Iowa, that in a good number of States the use of

alternatives can not stem the tide of increasing numbers of individuals requiring incarceration. Therefore, the financial assistance offered by S. 186 to correctional facility construction is strongly supported.

We support the block grant concept as set forth in Section 202 of the bill.

We commend you on the emphasis you have placed on long-range planning and coordination as set forth in Section 203. However, we suggest that the extensive paper submissions to the federal government that appear to be required by Sections 203(a) (2) and (5) should be replaced with simplified descriptions of the work products produced. The actual work products are best retained in the State.

The idea for the reestablishment of a National Clearinghouse on Construction which can provide advice and information but not set standards or approve grants is a good one.

We support the interest subsidy provisions of Section 208 wholeheartedly. Present State and municipal bonds are paying interest in the 12 - 13% range. Not only can States and localities not afford these interest rates now, but these inflated rates mortgage away the ability of State and local units of government to pay for public services for future generations. The present interest rates stand in stark contrast to the rates of 1-1/4% to 3-1/2% that prevailed for State and municipal bonds 5 to 10 years ago.

We support the interest subsidy provisions even in the absence of a formula grant program.

Finally, we note the authorization levels of \$500-million to

\$1-billion. Even though these sums appear to represent the provision of a great deal of money, the sums would only permit State and localities to meet a fraction of their need. If the correctional construction cost figures we have cited for the Commonwealth of Virginia and the figures you have heard described by other witnesses are at all representative, then more money than is proposed in S. 186 should be made available.

Thank you for the opportunity to testify, and I would be pleased to answer any questions.

ARIZONA STATE JUSTICE PLANNING AGENCY,
Phoenix, Ariz., May 28, 1981.

Hon. CHARLES MATHIAS,
358 Russell Senate Office Building,
Washington, D.C.

DEAR SENATOR MATHIAS: I am writing to you to express support for S. 186 sponsored by Senator Dole. I offer this testimony for the record to illustrate why this is very timely legislation for Arizona and why it is urgently needed.

As has occurred in many other states, Arizona prisoners have filed class action lawsuits in federal district court alleging substandard, unconstitutional conditions in Pima and Maricopa Counties (which contain Phoenix and Tucson, our two largest cities) and in Yuma County. Simultaneously, the State Department of Corrections came under federal judicial order to reduce inmate overcrowding at Arizona State Prison. Counties and towns were faced with the possibility of having jail standards mandated by the federal judiciary through an adversary process.

It was in this sequence of events in 1978 that Arizona began to consider creation of its own jail standards. Senator Jim Kolbe, chairman of the Judiciary Committee of the Arizona Senate and a member of the State Justice Planning Agency Supervisory Board presented a proposal for the creation of a blue ribbon panel of elected public officials, judges, corrections officials, and private citizens, to study the situation and develop a set of advisory standards for reference by our 14 counties and 75 cities and towns. The Committee conducted three public hearings throughout Arizona, received public participation, and gathered information. The Committee's findings and report were adopted by the Justice Planning Agency's Supervisory Board in March of this year.

In January, the state prepared a report on the impact of the proposed jail standards which provided detailed information on the possible impact of the proposed standards on local correctional facilities. Although the majority of the standards were found to have minimal financial impact, standards relating to overcrowding and inadequate personnel will require an estimated \$110 million to bring county and local facilities into compliance. Of that total, some counties will have to renovate existing facilities, while others will need additional space or entirely new facilities.

Prospects for funding of jail standard compliance within Arizona are not encouraging. By referendum, the state has adopted both stringent spending and taxing limitations which allow for growth of no more than 7 percent a year. Combined with inflation and the rising cost of health and other social service programs, the counties are faced with a heavy burden excluding the cost of jail standard compliance. If the counties cannot comply, they are faced with the equally onerous possibility of standards imposed by the federal judiciary in an adversary process which may vary by county and municipality.

By the recommendations of its Jail Standards Committee, and the adoption of such standards by the State Justice Planning Agency, Arizona has demonstrated the will to provide safer, more secure, and more professional operation of its county jails. The legislation sponsored by Senator Dole is essential if we are to maintain the

momentum to fully realize our goals. I hope Arizona's experience will be helpful to your Committee in its consideration of jail construction legislation.

I would, however, like to make a recommendation in regards to the scope of jail construction legislation. In our work with the Office of Juvenile Justice and Delinquency Prevention and the Bureau of Indian Affairs, we have discovered that conditions in jails used to house adults and juveniles on Indian reservations in Arizona are similar to substandard jails in the most remote cities and towns. I believe that jail construction legislation would be strengthened if jails on Indian reservations were included. I would be happy to meet with you and your Committee on this issue and jail construction legislation in general at your convenience.

Sincerely,

RICHARD C. WERTZ,
Executive Director.

Senator DOLE. Mr. William E. Ready, member of the board of directors of the National Association of Counties, and Mr. Robinson, executive director of the Allegheny County Prison Board, Pittsburgh, Pa.

You may proceed in any way your wish. Your entire statements, if you have prepared statements, will be made a part of the record. We are under some time constraints, so if you could summarize your statements, it would give us time for questions. I guess you can proceed in the order you were called.

STATEMENT OF WILLIAM E. READY, MEMBER, BOARD OF DIRECTORS OF THE NATIONAL ASSOCIATION OF COUNTIES

Mr. READY. Thank you, Mr. Chairman.

I am William Ready, general counsel and executive secretary of the East Mississippi County Officials Association, a member of the National Association of Counties' board of directors, and an immediate past president of the National Association of County Civil Attorneys. This is a long-winded way to say that you have a poor old country lawyer from Mississippi here terribly impressed.

Senator BUMPERS. I know about those old country lawyers, they are like one-eyed mules. When you think they are not looking is when they kick the hell out of you. [General laughter.]

Mr. READY. This is the only defense we got, when the Yankees are down on us hard, Senator.

As the Senator said, the statement is in the record. Contrary to most courts that I appear before, I take note of the fact that the members of the committee have apparently read all of this material, and that is very pleasing.

I do think that it is required that I state quite frankly and openly at the beginning that the National Association of Counties does not support S. 186 in its present form. After hearing some of the statements and questions this morning from the members of the committee, however, I am personally impressed that we are not so far apart as originally thought.

I, therefore, must make the second flat statement that probably is going to upset most of the staff here behind me, and it boils down to this: I have, after many, many years of practicing law in a rural environment from your State to mine, across the Southeast, and more currently in most of the States of this Nation, been impressed with one thing and it frightens me with this bill. Too many bills that are thrashed out, worked hard on by the Senate and the House of Representatives in Washington, get put on the books and then when the bureaucracy completes the regulations

that are essential, it is not at all what the law indicated to me was intended. An old boy at home said, there are about 4 million miles between the bills that the Senate passes and the word that reaches Lost Gap, Miss.

I do think sincerely that something should be done with this bill. There are several areas that I think are worthy of comment in that regard.

First, it would seem to me that we, as politicians at the local and State level, must look at the Congress and the people in Washington for leadership. This bill seems to me to lack inducement for the creation and maintenance of any partnership between State and local governments.

Local governments, counties particularly, have got the largest burden in jails. This bill does deal with jails, prisons, and other physical plant facilities. The counties themselves, however, take note of the fact that this bill provides for \$6.5 million over about 7 years.

Senator DOLE. It is \$6.5 billion.

Mr. READY. You will have to excuse me, Senator, we don't talk in billions.

Senator DOLE. I know. We don't talk in millions, and you don't talk in billions.

Mr. READY. That is correct, it is a problem we have.

Senator BUMPERS. If you can't think in terms of billions, we don't want you here.

Mr. READY. We do note that \$6.5 billion over 7 years, when the U.S. Government's most recent studies indicate that if adequate, constitutionally acceptable jails were constructed today to house just the prisoners in jail today, the cost would be between \$8 and \$10 billion immediately.

Senator BUMPERS. Say that again.

Mr. READY. If there were constructed jail and prison facilities today to house prisoners that are in jail today, it would cost between \$8 and \$10 billion immediately.

Senator BUMPERS. I don't understand that statement. They are housed now.

Mr. READY. But they are housed in unconstitutional, subhuman facilities.

Senator BUMPERS. You mean to house them in a constitutional way.

Mr. READY. That is what I said.

We do note also—the sheriff's statement did not emphasize it, but the spokesman for the Sheriffs' Association did emphasize it, and to me this is the main thrust of NACO's position this morning—that while a bill for funding of physical plant, for jails and prisons and other things, even if it were upgraded in amounts of money, is important, it standing alone is not as important as one might seem.

A funding bill should be tied to some inducements, some leadership, some temptation, if you please, for the partnership between State and local governments, and it should be tied to, more importantly, diversionary programs.

There are literally thousands of people in jail today, at least half of whom are presumed innocent under our Constitution, many of

them alcoholics, ill people, mentally ill people, retarded people, and juveniles who are inappropriately confined in adult jails. We don't think a fund for building physical plant is adequate, when it is not linked to alternatives and when experience has shown that the more you build, the more you fill.

Politics, I am sorry to say, does not stop at the courthouse door. Local politicians, be they supervisors, whom I represent, or judges, react to the public. It is the public's business, but the public is not always well informed. To be quite frank, they are seldom well informed. It is the politicians, the people who hold public office, who should give this leadership.

Judges, seeing the jails there, have historically filled them up. In my own home State, this is true. It was indicated in recent studies that Mississippi has a high rate of incarceration, ranking 16th in the Nation. I do know for a fact that our State prison system is under a Federal court order.

State prisoners have been backed up to the tune of some 1,500 in local jails. My own jail, which is one of the best in the State, is in such condition that the best condition in our jail is worse than the worst condition at the State penitentiary.

However, luckily, Judge Keady issued an order 2 weeks ago which, for the first time, has brought all the State prisoners, wherever located, under his order, so that the standards are now going to be reached.

We would also point out to this committee that we feel that the Federal Government and the U.S. Senate has the responsibility of leadership in this field because most of the problem of backups comes from the Federal courts, done mostly under 42 U.S.C. 1983 suits. If the Federal Government would offer leadership, then they must offer the money that goes with it. To that extent, we do agree with this bill.

We do think that the use of jails is, in fact, a yardstick of inadequacies, of the breakdowns in the community's health and social service systems. We do think, again as part of the total package to which we made reference earlier, that a multifaceted approach is required rather than focusing on just on the physical plant.

We have talked with some members of this committee's staff, and find that they are in agreement with it, but we do have an original thrust difference.

We are also, I think, constrained to point out to this committee, as will be pointed out by my associate here, I speak for the National Association of Counties, and I speak only after a rather comprehensive policy development process.

The National Association of Counties is an association of a majority of the counties in the United States, and the position paper which I have submitted to you is the position of NACO after a very comprehensive process, which starts with representatives of boards of supervisors, ideas, suggestions, recommendations being submitted to steering committees on the subject that I have made my report on this morning, extensive hearings, much participation by all members.

The steering committee then recommends these matter to the board of directors, which itself has hearings. Then the matter is

presented to the annual meeting, where all members present take a position.

I do not represent to this committee this morning that I speak for all counties. I do speak as a result of this rather comprehensive process, and I do speak for a majority of the counties.

Mr. Chairman, I do have and would offer for the record certain minimal things that we do feel are pertinent. One is a very good article from Newsweek magazine,¹ August 18, 1980.

There is another article from Business Week² of February 9, 1981. A criminal justice program factsheet dealing with the use of part E funds by the recently demised LEAA.

If the committee is interested, to show the position of NACO and its long involvement in this issue, and I must say that it predates most other organizations, I would offer copies of the County News, which is the NACO newspaper going to many thousands of members around the United States.

I would also offer, if you want in the record, pictures of some of the hardened criminals that do wind up in our county jails.

I, myself, am county administrator for the Chancery Court of Lauderdale County, and we have devised a method for getting alcoholics and mentally ill persons out of jail, but this picture indicates, and properly so, that a majority of the people—

Senator BUMPERS. Where were these taken?

Mr. READY. In New Mexico, Senator.

Senator BUMPERS. Was this after the riot?

Mr. READY. That is a city-county jail. The riot was at the State prison.

Senator BUMPERS. This is a county jail?

Mr. READY. Yes, sir, a city-county jail.

That is who I am speaking for this morning. We do feel, and I can't emphasize it too much, that there is too little cooperation between the levels of government. Those of us at the county level are in the front line trenches, I am sorry to say. We are the ones who get sued. We are the ones who are out there and doing the fighting. Sadly, we don't always show the leadership that we should.

States get Federal money and it seems to disappear before it gets down to us. Something happens. We have never figured it out, and we are certainly not here this morning to point any accusing finger.

I have to say also that at the Federal level something comes between you gentlemen and where it gets to the States, because the bureaucrat is somewhere in there. It just never comes to us the way it leaves you gentleman, and we think that some study and some broadening of viewpoint is essential at this time.

Senator DOLE. I appreciate that.

I am not certain we can make everything a part of the record because of printing costs.

Mr. READY. We understand.

Senator DOLE. This is a new conservative administration and Senate, you understand.

¹See p. 180.

²See p. 183.

Mr. READY. If some of this money would be sent on down to us, we would support you in it.

Senator DOLE. We have to try and save some of that and get it back to you. I will have the staff look over the material.

Mr. READY. This is really what we wanted you to do.

Senator DOLE. Let's hear from Mr. Robinson, and then we can ask questions.

**STATEMENT OF WILLIAM ROBINSON, EXECUTIVE DIRECTOR,
ALLEGHENY COUNTY PRISON BOARD, PITTSBURGH, PA.**

Mr. ROBINSON. Thank you very much, Senator.

My name is William B. Robinson, and I am executive director of the prison board in Allegheny County, Pittsburgh, Pa.

I want to take the opportunity to thank you for allowing me to speak on S. 186, the Criminal Justice Construction Reform Act. Allegheny County supports S. 186 and endorses the concept of continued intergovernmental partnership.

Allegheny County, Pa., is not unlike many hundreds of counties across the Nation. We are engaged in a daily life and death battle, and we may be losing the war. Survival hinges upon fractions of percentage points reflecting increase in crime, increase in court cases, probation, violations, bond revocations, trial delays, and a host of factors that determine the number of persons committed to the local jails.

Ferocious demands of increasing criminal activity and the concomitant demand from the public for protection is creating a system crisis with complex burdens that fall squarely and disastrously upon our Nation's local jails.

We greeted 1981 in the throes of a growing jail crisis. In the first 5 months of 1981 our position has deteriorated daily. Our problem may have begun the day our architectural masterpiece was opened in 1887.

A well-known architect, H. H. Richardson, employed what is known as the Auburn model in designing our facility. This model embodies a prisoner classification system used in New York's Auburn Prison from 1816 to 1823. The system emphasized solitary confinement and introspection, and was discarded by the New York Legislature when it was found to encourage insanity, instability, and hostility with its general atmosphere of deprivation and isolation.

In other words, 40 years after this means of treating prisoners was abandoned, the architectural design symbolizing the treatment had evolved as a world standard and was used in the construction of our institution.

We have spent millions in county funds to renovate the facility and for operations to overcome the nightmare of providing late 20th century services in an early 19th century institution. The 586 cells in the institution are approximately 40 square feet, with national standards of 60 square feet being mandated.

The Pennsylvania State prison system experienced a 7.5-percent increase in population in 1980. During the same period, Allegheny County jail received 15 percent more inmates in 1980 and had an average daily population of 10 percent greater in 1980 than in 1979.

From January 1981 through May 1, we have 21 percent more residents than in 1979. That is 100 persons more per day than the years 1973 through 1979. By contrast, the overall figures for county jails in Pennsylvania show an increase of 18 percent, and there are 67 of those in Pennsylvania. By 1982, we could have an average daily population of 600 or more persons per day, more than we can humanely treat.

We have a short-term management plan in Pennsylvania. Rental overflow facilities are being investigated. Regular emergency meetings are being held with court officials to focus on procedure alterations and individual releases and transfers where possible.

We leap on seemingly insignificant changes that promise population reduction of even five or six inmates. Every facet of our local criminal justice system is working at full steam, expanding beyond capacity to accommodate what is truly a system going wild.

The first response of most persons hearing of overcrowding is the suggestion that we utilize alternatives to incarceration. We are depending on a court-operated bail agency, pretrial release programs, probation without verdict of several different types, plus other programs that collectively function to limit population at the jail. We have formulated a population review committee to weekly go over the entire jail population. This committee is represented by judges, district attorneys, public defenders, and probation and parole authorities.

In every sense, the buck stops at the county level. Yet the counties have the least influence on the level of dollars available or the regulation enacted to manage these services and systems. In our county we have control only over the setting of millage within limits. The legislature sets our limits. Currently we are within 1 mill of that limit.

More to the point, we are at the limit of our property owners' ability to pay taxes. To go beyond this limit further erodes our tax base by forcing flight or driving our citizens to the proverbial poorhouse.

What is the situation?

The situation is a rising crime rate and increasing seriousness of offenses and offenders, 12 percent in 1980 over 1979, and a 20-percent increase in court cases in 1980, and 20 to 25 percent more cases from January to May 1981. The bleak economic conditions generally, closing of industries, rising unemployment and inflation, contribute to the rising crime, the need for social welfare services, plus and more importantly the eroding of our tax base.

Aging and overcapacity criminal justice facilities;

Even if additional judges would ease our jail problem, we have no additional court space;

Federal court intervention and promulgation of Federal standards;

Feverish competition for tight local funds, with financial crisis facing other areas of county services; and

State financial straits. Federal financial straits.

Pennsylvania will pass a mandatory sentencing law that could double or triple our jail population, and we predict that not one penny in State assistance will help the counties through such a disaster.

All of the above problems have contributed to placing the Allegheny County Commissioner and the county jail in the severe crisis we are now experiencing.

Federal involvement in the operation of the criminal justice system via court intervention, promulgation of standards, and decreasing role in crime fighting and offender processing, has had a tremendous impact on States and units of local government. The law enforcement and local criminal justice system must handle the increased burden.

The Federal Government already occupies a position of authority over operation of criminal justice systems throughout the Nation.

In this atmosphere of change and staggering management burdens, our struggle to meet increased demands with existing facilities and resources only exacerbates and accelerates facility deterioration.

In August of 1980, Allegheny County foresaw the worsening situation with the county jail and court-related facilities. Court case-loads rising by more than 20 percent, jury trials increasing, jail length of stay up more than 19 percent, all pointed to a need for a careful systematic analysis and development of a long-range criminal justice facilities plan.

I will go further and say that we need a plan that could be implemented, for we have shelves full of useless, unworkable proposals.

In July, our project will get underway with LEAA funding through our State planning agency. It is our intention to explore the viable choices. Our concept, briefly, is that criminal justice facilities must relate to one another in the same way that operations and services relate. This is the only rational way to approach the problem.

Critical to our analysis are the reuse of possibilities for any facilities that might be vacated and the degree to which reuse can offset construction costs. No other jurisdiction to our knowledge is pursuing this.

Senator Dole's bill reflects this concept of system planning and we fully agree that such an approach has the highest likelihood of success in effecting change that sticks.

Some may say that funds that would be made available through S. 186 over the next 7 years are excessive, and not conducive to the new Federal approach to reduce Federal assistance to State and local governments.

If you examine the situation in the depth required, you know that the amount of money pales in the face of the desperate need and the enormous magnitude of the job that must be done.

Rebuilding and revitalizing our criminal justice facilities is a task vital to our national defense, just as Justice Burger stated at the commencement address at Brown University some weeks ago.

We know we will probably conclude that we must replace our facilities. How can we pay for it without flattening our resources?

A \$100 million project is underway to replace Kane Hospital, our bridge replacement and repair program runs millions per year. The building housing criminal justice offices must be vacated, it has been condemned. Still, we need a jail.

Allegheny County is in a desperate situation, frequently having to bear the results of State government's desperate predicament. We urge the passage of S. 186, and we also urge that the bill be strengthened and given the potential for dramatic impact by mandating specific levels of assistance or support for local jails.

Our fear is that if given complete control over planning and utilization of funds, States will naturally choose to solve State prison problems and ease impact on State resources, leaving county jails to continue to stew and brew violence and disorder.

Lest the impression be left that we are beginning a State versus local scampering for Federal dollars, recall the experience with part E moneys that were available under the LEAA program. At least in our State, these funds were used almost exclusively for State facilities. We must begin this time at the county level, for the county level is the open end of the funnel.

Allegheny County applauds those with the courage and foresight to propose a Federal assistance role in this area at this time of budget cutback fever. Pass S. 186 and pass it with a strong commitment of assistance to county government and to county jails and court facilities.

Congress has an opportunity to spark a movement for rational and systematic planning, utilization, and replacement. The chaos that characterizes our system of justice can only be eliminated through the strength of intergovernmental cooperation and coordination, and through combined financial resources.

Senator DOLE. Thank you very much.

I had a number of questions, Mr. Ready, but I think you have answered almost everyone in your statement.

A primary problem with S. 186 was just stressed by Mr. Robinson, that is the concern, unless there is some passthrough of some kind, that most of the money will end up being spent on State institutions.

Mr. ROBINSON. Yes, we are very much concerned about that, Senator.

Mr. READY. We have seen that before, Senator, yes. We do feel that there must be some balance there.

As I say, the counties are always looking for partnerships. We don't feel that we ought to continue to be the honoree at the lynching, you know. Somebody has got to put some boundary, so that some of it can come to the front line.

Senator DOLE. I think that there is certainly some justification for that. It is a matter that we will be looking at very carefully.

You both understand that we are in a very difficult time from the standpoint of creating any new Federal program, but at the same time I believe this is one that might merit serious consideration by this or any administration. It is one that must be addressed now. It is a very serious problem.

We have a number of young people in the audience this morning. I hope they are listening carefully to the problems we have in the local, State, and Federal prisons. I am not suggesting that any of them will ever be there, but I think it is an area that the American people don't focus on at all, unless they are directly involved.

There is very little sentiment across this Nation to do anything in this area, to spend any money, or to make any improvements. A

brief look at the photographs that you submitted will indicate that there are some real problems at all levels, Federal, State, and county levels.

We appreciate your testimony. We may be asking for some assistance as we get into the next stage of this legislation that Senator Bumpers and I have a direct interest in, as do others. We will be looking for assistance from officials of your organization, and we will appreciate it very much.

Mr. READY. You certainly will get it from NACO, Senator. Thank you very much for allowing us to be here.

Senator DOLE. They do good work, too, and we will make that part of the record.

[Prepared statement and additional submissions of Mr. Ready follow:]

STATEMENT OF WILLIAM E. READY, GENERAL COUNSEL AND EXECUTIVE SECRETARY, EAST MISSISSIPPI COUNTY OFFICIALS ASSOCIATION; NACO BOARD MEMBER; AND IMMEDIATE PAST PRESIDENT, NATIONAL ASSOCIATION OF COUNTY CIVIL ATTORNEYS, ON BEHALF OF THE NATIONAL ASSOCIATION OF COUNTIES BEFORE THE SUBCOMMITTEE ON THE JUDICIARY CONCERNING S. 186, THE CRIMINAL JUSTICE CONSTRUCTION REFORM ACT, JUNE 8, 1981, WASHINGTON, D. C.

CHAIRMAN MATHIAS, AND DISTINGUISHED MEMBERS OF THIS SUBCOMMITTEE, MY NAME IS WILLIAM E. READY. I AM GENERAL COUNSEL AND EXECUTIVE SECRETARY OF THE EAST MISSISSIPPI COUNTY OFFICIALS ASSOCIATION, A MEMBER OF THE NATIONAL ASSOCIATION OF COUNTIES BOARD OF DIRECTORS AND IMMEDIATE PAST PRESIDENT OF THE NATIONAL ASSOCIATION OF COUNTY CIVIL ATTORNEYS.

IT IS WITH THE BENEFIT OF MY EXPERIENCE IN LOCAL GOVERNMENT AND CRIMINAL JUSTICE, AND AS A STUDENT OF THE INTERGOVERNMENTAL SYSTEM, THAT I APPEAR BEFORE YOU THIS MORNING.

I COME TO PRESENT THE VIEWS OF THE NATIONAL ASSOCIATION OF COUNTIES* ON A MATTER OF EXTREME IMPORTANCE AND URGENCY - CRIMINAL JUSTICE FACILITIES. SPECIFICALLY, MY REMARKS WILL FOCUS ON S. 186, "THE CRIMINAL JUSTICE CONSTRUCTION REFORM ACT," INTRODUCED BY SENATOR DOLE.

BEFORE I BEGIN I WISH TO COMPLIMENT THE CHAIRMAN AND THE SUBCOMMITTEE FOR CONVENING THESE IMPORTANT HEARINGS ON THE CONDITIONS OF CRIMINAL JUSTICE FACILITIES IN OUR COUNTRY. I WISH ALSO TO COMPLIMENT SENATOR DOLE FOR PERCEIVING THE PROPOSED LEGISLATION AS A CATALYST FOR SERIOUS DISCUSSION. IT IS CLEAR TO ME THAT THE ISSUE OF CRIMINAL JUSTICE CONSTRUCTION HAS NEVER REALLY BEEN FULLY DEBATED IN PREVIOUS YEARS. A SERIOUS EXAMINATION IS NOT ONLY OVERDUE, BUT ALSO COULD LEAD TO LEGISLATION THAT WOULD SERVE THE NATIONAL INTEREST BY RESPONDING TO THE SERIOUS PROBLEM OF INADEQUATE CRIMINAL JUSTICE FACILITIES.

AS THIS COMMITTEE KNOWS, COUNTIES HAVE MAJOR FISCAL AND POLICY-MAKING RESPONSIBILITY FOR CRIMINAL JUSTICE FACILITIES AND SERVICES AT

*THE NATIONAL ASSOCIATION OF COUNTIES IS THE ONLY NATIONAL ORGANIZATION REPRESENTING COUNTY GOVERNMENT IN THE UNITED STATES. THROUGH ITS MEMBERSHIP, URBAN, SUBURBAN AND RURAL COUNTIES JOIN TOGETHER TO BUILD EFFECTIVE, RESPONSIVE COUNTY GOVERNMENT. THE GOALS OF THE ORGANIZATION ARE: TO IMPROVE COUNTY GOVERNMENTS, TO SERVE AS THE NATIONAL SPOKESMAN FOR COUNTY GOVERNMENTS, TO ACT AS A LIAISON BETWEEN THE NATION'S COUNTIES AND OTHER LEVELS OF GOVERNMENT; AND, TO ACHIEVE PUBLIC UNDERSTANDING OF THE ROLE OF COUNTIES IN THE FEDERAL SYSTEM.

THE LOCAL LEVEL. COUNTIES NOT ONLY PROVIDE FUNDING TO ALL MAJOR COMPONENTS OF THE CRIMINAL JUSTICE SYSTEM -- LAW ENFORCEMENT, COURTS AND CORRECTIONS -- BUT THEY ALSO HAVE A MAJOR ROLE IN THE ADMINISTRATION OF SUCH FACILITIES AND SERVICES. OUR EXPENDITURES IN CRIMINAL JUSTICE NOW EXCEED \$6 BILLION ANNUALLY - MORE THAN ANY OTHER UNIT OF GOVERNMENT.

ALTHOUGH MANY OF OUR CRIMINAL JUSTICE FACILITIES ARE IN SUBSTANDARD CONDITION, IN TERMS OF NATIONAL PRIORITIES AND NEEDS, NACO'S CRIMINAL JUSTICE AND PUBLIC SAFETY STEERING COMMITTEE HAS IDENTIFIED THE COUNTY JAIL AS ITS FAR MOST SERIOUS PROBLEM. MANY OF THESE FACILITIES ARE IN DEPLORABLE CONDITION, UNFIT FOR HUMAN HABITATION, AND THEY ALSO CONTAIN THOUSANDS OF PERSONS WHO ARE INAPPROPRIATELY CONFINED.

UNIVERSITY OF ILLINOIS CRIMINOLOGIST, DAVID FOGEL, HAS ACKNOWLEDGED THE CRISIS SITUATION SURROUNDING JAILS IN THIS COUNTRY: "THEY ARE THE WORST BLIGHT IN AMERICAN CORRECTIONS," HE SAID. "AND JAILS ARE AT THE FRONT END OF THE SYSTEM WHERE PEOPLE ARE STILL PRESUMED INNOCENT."

A REALISTIC APPROACH TO SOLVING THE JAIL CRISIS, WE BELIEVE, IS DIFFICULT BUT ACHIEVABLE, REQUIRING EXPANDED USE OF ALTERNATIVES TO INCARCERATION, NEW AND EFFECTIVE PARTNERSHIPS BETWEEN STATE AND COUNTY GOVERNMENTS, BETTER LINKAGES BETWEEN CRIMINAL JUSTICE AND HEALTH AND SOCIAL SERVICE AGENCIES, COMPREHENSIVE SYSTEMWIDE PLANNING AND FUNDS TO IMPROVE FACILITIES.

A PROGRAM OF RENOVATION AND CONSTRUCTION ALONE WOULD ONLY EXACERBATE OUR EXISTING PROBLEMS BY UNNECESSARILY PROMOTING THE EXPANSION OF JAIL POPULATIONS AS WELL AS THE HIGH COSTS OF INCARCERATION.

THREE IMPORTANT POINTS NEED TO BE MADE HERE: FIRST, THE CHARACTERISTICS OF JAIL POPULATIONS ARE VERY DIFFERENT FROM THOSE OF PRISON POPULATIONS, AND RESEARCH HAS SHOWN THAT LARGE NUMBERS OF JAIL INMATES COULD BE RELEASED SAFELY THROUGH PRETRIAL AND COMMUNITY CORRECTIONS PROGRAMS.

PRISONS HOUSE NEARLY 100 PERCENT FELONS, WHILE 40 TO 50 PERCENT OF JAIL INMATES HAVE NOT EVEN BEEN CONVICTED OF A CRIME, BUT ARE AWAITING TRIAL. OF THESE, 80 PERCENT HAVE HAD THEIR BAIL SET. AN ADDITIONAL SIGNIFICANT PERCENTAGE ARE SERVING SHORT SENTENCES FOR MINOR MISDEMEANORS.

MANY JAIL INMATES, SUCH AS PUBLIC INEBRIATES OR THE MENTALLY ILL ARE BEHIND BARS BECAUSE ADEQUATE CARE IS NOT AVAILABLE IN THE COMMUNITY. YET THESE PEOPLE ARE OFTEN HOUSED IN WORSE CONDITIONS THAN THOSE FACED BY CONVICTED FELONS SERVING TIME IN STATE INSTITUTIONS. THE PHYSICAL AND PSYCHOLOGICAL NEEDS OF THESE PEOPLE REQUIRE SPECIALIZED MEDICAL SUPERVISION WHICH MOST JAILS ARE UNABLE TO PROVIDE.

ONE SERIOUS PROBLEM WAS REVEALED IN A RECENT STUDY BY THE NORTH CAROLINA CHIEF MEDICAL EXAMINER. HE STUDIED DEATHS IN NORTH CAROLINA JAILS FROM 1972 TO 1976 AND FOUND THAT ONE-THIRD WERE SUICIDES; MORE THAN HALF OF WHICH TOOK PLACE DURING THE FIRST 12 HOURS THEY WERE IN JAIL. EIGHTY-FIVE PERCENT OF THE PEOPLE WHO COMMITTED SUICIDE WERE INTOXICATED.

OUR SECOND POINT IS THAT STUDIES HAVE SHOWN A STRONG CORRELATION BETWEEN CAPACITY AND INMATE POPULATION. IN OTHER WORDS, BUILDING MORE JAILS HAS NOT SOLVED THE OVERCROWDING PROBLEM AND SHOULD NOT BE EXPECTED TO DO SO IN THE FUTURE. A RECENT CONGRESSIONALLY-MANDATED STUDY BY THE NATIONAL INSTITUTE OF JUSTICE, AMERICAN PRISONS AND JAILS, FOUND THAT ADDITIONAL SPACE IS FILLED TO CAPACITY WITHIN TWO YEARS AND THAT, WITHIN FIVE YEARS, NEW SPACE IS 30 PERCENT OVER CAPACITY. MOREOVER, AVAILABLE SPACE, NOT CRIME OR POPULATION-AT-RISK, WAS THE ONLY POTENTIAL INDICATOR THAT HAD A STATISTICALLY SIGNIFICANT RELATIONSHIP TO INMATE POPULATION. THE NIJ STUDY STATES, "WHILE THESE FINDINGS ARE ONLY SUGGESTIVE, THEY POINT STRONGLY TO THE NEED FOR CAUTION IN ASSUMING THAT SPACE ADDED WILL NECESSARILY IMPROVE THE CONDITIONS OF TODAY'S PRISONERS."

OUR THIRD POINT RELATES TO THE COSTS OF CONFINEMENT: NOT ONLY WOULD THE COSTS OF BUILDING JAILS ^{AND PRISONS} TO MEET MINIMUM SPACE STANDARDS BE ASTRONOMICAL, BUT ALSO THE OPERATING COSTS WOULD BE IMMENSE. ACCORDING TO THE INSTITUTE REPORT: "ASSUMING CONSTRUCTION COSTS BETWEEN \$32,000 AND \$40,000 PER SPACE [AND THIS IS A CONSERVATIVE ESTIMATE], EXPENDITURES ON THE ORDER OF EIGHT TO 10 BILLION DOLLARS COULD BE ANTICIPATED MERELY TO RESOLVE THE [CURRENT] DEFICIT BETWEEN REPORTED CAPACITY AND A MEASURE BASED ON 60 SQUARE FEET PER SPACE."

SIXTY SQUARE FEET OF FLOOR SPACE PER PERSON IS THE SMALLEST AMOUNT RECOMMENDED BY ANY STANDARD-SETTING BODY, AND, WHEN THE

STUDY WAS MADE, ONLY 39 PERCENT OF LOCAL JAIL CELLS MET OR EXCEEDED THIS STANDARD.

ACCORDING TO THE REPORT OPERATING COSTS ARE SKYROCKETING. IT ESTIMATES OPERATING COSTS FOR JAILS AND PRISONS AS HIGH AS \$5.3 BILLION IN 1982. THIS COMPARES TO A TOTAL OF \$2.4 BILLION IN FISCAL YEAR 1977.

THE LEVEL OF BOTH CAPITAL AND OPERATING COSTS NEEDED TO MEET MINIMUM STANDARDS "IS LIKELY TO GO WELL BEYOND THE FINANCIAL CAPABILITIES OF MANY JURISDICTIONS," THE REPORT CONCLUDES.

THESE POINTS, NACO BELIEVES, AT THE VERY LEAST SUGGEST THAT WE SHOULD PURSUE ALTERNATIVES TO INCARCERATION TOGETHER WITH NECESSARY RENOVATION AND CONSTRUCTION IN A COMPREHENSIVE EFFORT TO RESOLVE THE CORRECTIONS CRISIS IN OUR NATION.

THE BACKGROUND

LOCAL JAILS HAVE BEEN ENMESHED IN CONTROVERSY IN THIS COUNTRY FOR 200 YEARS. WHAT IS THE PURPOSE OF LOCAL CORRECTIONS? WHO SHOULD BE IN JAIL? WHAT ARE THE MINIMUM STANDARDS FOR JAIL CONDITIONS? THE ANSWERS TO THESE QUESTIONS HAVE VARIED ACROSS BOTH TIME AND COMMUNITY.

THERE IS NO ARGUMENT TODAY, HOWEVER, ABOUT WHETHER WE HAVE A NATIONAL JAIL CRISIS. IN 1978, COUNTIES AND OTHER UNITS OF LOCAL GOVERNMENT OPERATED 3,493 JAILS WITH SOME 158,000 PEOPLE CONFINED ON AN AVERAGE DAY. IT HAS BEEN ESTIMATED THAT AS MANY AS 6.3 MILLION PEOPLE ARE PROCESSED THROUGH LOCAL JAILS EVERY YEAR -- MANY, MANY TIMES THE NUMBER WHO GO THROUGH THE PRISON SYSTEM. ONE OUT OF EVERY FOUR JAILS IS OVER FIFTY YEARS OLD. FORTY-FOUR PERCENT OF THESE JAILS HOUSE LESS THAN TEN PEOPLE; NEARLY 90 PERCENT ARE WITHOUT EITHER EDUCATIONAL OR RECREATIONAL FACILITIES; TWO-THIRDS HAVE ONLY LIMITED FIRST-AID MEDICAL CAPABILITY; AND ONLY HALF HAVE THE PHYSICAL CAPACITY TO SEPARATE PRETRIAL DETAINEES FROM SENTENCED OFFENDERS.

IN PART, THE JAIL IS A YARDSTICK OF THE INADEQUACIES AND BREAKDOWNS IN A COMMUNITY'S HEALTH AND SOCIAL SERVICE SYSTEMS. TO THE EXTENT THEY HOUSE PEOPLE WHO DO NOT BELONG THERE -- JUVENILES, ALCOHOLICS, THE MENTALLY ILL AND RETARDED, AND MOST OF THOSE WHO CANNOT AFFORD BAIL, JAILS REFLECT OUR COMMUNITIES' INABILITY OR UNWILLINGNESS TO MEET THE NEEDS OF PEOPLE WITH PROBLEMS.

EACH YEAR, ACCORDING TO RELIABLE ESTIMATES, 120,000 JUVENILES ARE PROCESSED THROUGH ADULT JAILS AND ONE MILLION PERSONS ARE ARRESTED FOR PUBLIC DRUNKENNESS, MANY OF WHOM ARE PLACED IN JAIL. ESTIMATES OF ANNUAL ADMISSIONS TO JAIL OF THE

MENTALLY ILL AND RETARDED RANGE AS HIGH AS 600,000. MORE THAN FORTY PERCENT OF JAIL INMATES ARE AWAITING TRIAL, WITH MOST OF THIS GROUP DETAINED NOT BECAUSE THEY ARE A THREAT TO THE COMMUNITY OR ARE LIKELY TO FLEE IF RELEASED, BUT SIMPLY BECAUSE THEY CANNOT RAISE BAIL.

MOST JAILS ARE IN DEPLORABLE CONDITION. A FORMER ASSISTANT ATTORNEY GENERAL HAS CITED AN ESTIMATE THAT ONLY FIVE PERCENT TO FIFTEEN PERCENT OF THE NATION'S JAILS MEET CONSTITUTIONALLY ACCEPTABLE CRITERIA. SOME TEN TO FIFTEEN PERCENT OF ALL JAILS ARE UNDER COURT ORDER TO UPGRADE CONDITIONS. NOW THAT THE FEDERAL GOVERNMENT HAS RELEASED ITS LONG ANTICIPATED STANDARDS FOR JAILS, THE FEDERAL JUDICIARY, ALREADY ACTIVE IN ENFORCING CONSTITUTIONAL RIGHTS ON LOCAL FACILITIES, HAS A NEW TOOL TO USE IN ORDERING IMPROVEMENTS TO LOCAL JAILS.

AT THE SAME TIME, MANY COUNTIES FACE SEVERE FISCAL CONSTRAINTS, WHETHER THROUGH VOTER INITIATED PROPERTY TAX CAPS OR DEMANDS FOR SERVICES OUTSTRIPPING REVENUE SOURCE CAPABILITY. CAPITAL CONSTRUCTION FOR LOCAL JAILS CAN COST \$40,000 TO \$50,000 A BED. ADDED TO THIS BASIC COST ARE THE EXORBITANT COSTS OF BORROWING MONEY, WHICH CAN DOUBLE INITIAL CAPITAL NEED OVER THE LIFE OF A TWENTY-YEAR BOND, AND DRAMATIC INCREASES IN OPERATING EXPENDITURES FOR NEW FACILITIES.

COUNTIES ARE OFTEN RELUCTANT TO REPLACE THEIR AGING JAILS WITH NEW ONES THAT COULD DOUBLE THEIR PRESENT OPERATING COSTS. BUT A COUNTY UNDER PRESSURE FROM A COURT ORDER OR THREAT OF STATE AGENCY MANDATED CLOSURE MAY ABSORB THE COST OF A NEW JAIL AS THE QUICK SOLUTION. IN CONSEQUENCE, OTHER DESIRABLE COUNTY PROGRAMS ARE NEGLECTED AND LESS EXPENSIVE ALTERNATIVES TO INCARCERATION ARE SELDOM EVEN CONSIDERED.

NEED FOR INTERGOVERNMENTAL COOPERATION

PRESENTLY, PRISONS IN NEARLY HALF THE STATES HOUSE MORE INMATES THAN THEY WERE BUILT TO HOLD, WHILE NEARLY ALL OTHER STATES ARE AT OR NEAR CAPACITY. DURING THE LAST SEVERAL YEARS, BURGEONING PRISON POPULATIONS AND THE GROWING ACTIVITY OF THE JUDICIARY HAVE LED SOME STATE DEPARTMENTS OF CORRECTIONS TO HASTILY ARRANGE COST REIMBURSEMENT FORMULAS WITH STATE ASSOCIATIONS OF COUNTIES, FOR STATE INMATES BACKED UP IN LOCAL JAILS, AND TO TAKE OTHER REMEDIAL MEASURES UNDER THE GUISE OF SYSTEMWIDE IMPROVEMENT. SUCH PATCHWORK INITIATIVES ARE NOT ONLY SELF-SERVING AND MYOPIC, BUT THEY ALSO ARE COUNTERPRODUCTIVE IN RESOLVING THE REAL CRISIS -- THE OVERUTILIZATION OF JAILS AND PRISONS, AND THE SERIOUS LACK OF COMPREHENSIVE PARTNERSHIP ARRANGEMENTS BETWEEN STATE AND COUNTY GOVERNMENTS.

FEWER THAN TEN STATES HAVE DEVELOPED PARTNERSHIP ARRANGEMENTS WITH LOCAL

GOVERNMENTS IN ADULT CORRECTIONS. OF THESE, THERE ARE ONLY A FEW EXAMPLES OF TRULY IMAGINATIVE AND CREATIVE APPROACHES, MOST NOTABLY THE MINNESOTA COMMUNITY CORRECTIONS ACT OF 1973 AND REPLICATIONS OF IT IN OREGON, KANSAS AND CALIFORNIA. MOST STATES ONLY REGULATE LOCAL JAILS. THEY PROVIDE NO FUNDS OR ADEQUATE TECHNICAL ASSISTANCE TO COUNTIES FOR IMPROVING THEIR CORRECTIONAL FACILITIES OR FOR DEVELOPING ALTERNATIVES TO INCARCERATION.

THE FEDERAL RESPONSE TO THIS NATIONAL CRISIS HAS FALLEN FAR SHORT OF WHAT IS NEEDED. DURING THE LAST FIVE YEARS, SEVERAL BILLS HAVE BEEN INTRODUCED IN CONGRESS TO HELP STATE AND LOCAL GOVERNMENTS UPGRADE THEIR CORRECTIONS AND DETENTION FACILITIES. THESE BILLS HAVE LIMITED THEIR FOCUS TO CONSTRUCTION AND RENOVATION WITH IMPROVED PROGRAMS AND SERVICES WITHIN THE INSTITUTION.

SUCH PRIOR EFFORTS HAVE NOT RECEIVED ANY SERIOUS CONSIDERATION, AND NOT ONE BILL HAS EVEN BEEN REPORTED OUT OF SUBCOMMITTEE IN EITHER HOUSE. THE CRIMINAL JUSTICE CONSTRUCTION REFORM ACT (S. 186), PROVIDES FEDERAL FINANCIAL ASSISTANCE FOR ALL TYPES OF CRIMINAL JUSTICE CONSTRUCTION AND RENOVATION -- INCLUDING POLICE STATIONS, COURTHOUSES, HALFWAY HOUSES, JAILS AND PRISONS AT THE STATE AND LOCAL LEVEL. THE BILL AUTHORIZES \$6.5 BILLION OVER THE NEXT SEVEN YEARS.

NACO'S CRIMINAL JUSTICE AND PUBLIC SAFETY STEERING COMMITTEE, ON JANUARY 30, 1981, VOTED NOT TO SUPPORT THE CRIMINAL JUSTICE CONSTRUCTION REFORM ACT "IN ITS PRESENT FORM." THE COMMITTEE RECOMMENDED THAT THE BILL LIMIT ITS SCOPE TO COVER CORRECTIONAL AGENCIES ONLY AND REAFFIRMED NACO POLICY, WHICH CALLS FOR LINKING ALTERNATIVES TO INCARCERATION TO THE AWARD OF CONSTRUCTION FUNDS. THE POLICY ALSO CALLS FOR MULTI JURISDICTIONAL FACILITIES AND SERVICES, THE ESTABLISHMENT OF LOCAL CORRECTIONS ADVISORY BOARDS AND THE DEVELOPMENT OF A COMPREHENSIVE PLAN AT THE LOCAL LEVEL. NACO HAS ALSO SUGGESTED THE CREATION OF A NEW TITLE TO THE ACT -- ONE THAT WOULD PROVIDE FINANCIAL INCENTIVES TO STATES TO IMPLEMENT COMPREHENSIVE COMMUNITY CORRECTIONS PROGRAMS WITH COUNTY GOVERNMENT.

IN RECENT YEARS, FUNDING HAS BEEN SEVERELY CUT BACK FOR THE FEW FEDERAL PROGRAMS ASSISTING COUNTIES TO DEAL WITH PROBLEMS IN THEIR JAILS AND ALTERNATIVES TO INCARCERATION. THE LEAA PROGRAM HAS BEEN ELIMINATED. SOME OF ITS MONEY HAD SUPPORTED PROGRAMS PROVIDING ALTERNATIVES TO JAIL AND ADVANCED TREATMENT PROGRAMS WITHIN JAILS. OTHER FEDERAL AGENCIES WHOSE ASSISTANCE COUNTIES HAVE USED TO SUPPORT JAIL CONSTRUCTION AND ALTERNATIVES PROJECTS ARE THE ECONOMIC DEVELOPMENT ADMINISTRATION, THE COMPREHENSIVE EMPLOYMENT AND TRAINING ADMINISTRATION, AND THE

NATIONAL INSTITUTE OF CORRECTIONS. THEIR BUDGETS TOO HAVE BEEN REDUCED, EITHER BY ACTUAL CUTS OR INFLATIONARY EROSION.

JAIL REFORM — A NACO PRIORITY

JAILS ARE THE NUMBER ONE CRIMINAL JUSTICE PRIORITY FOR COUNTIES. IN THE LAST FEW YEARS, NACO HAS FOCUSED CONSIDERABLE ATTENTION ON THE JAIL CRISIS IN OUR COUNTRY. IT SPONSORED THE FIRST NATIONAL CONFERENCE ON THE INTAKE SERVICE CENTER AND, IN COOPERATION WITH MORE THAN 30 NATIONAL ORGANIZATIONS, HAS SPONSORED TWO NATIONAL CONFERENCES ON THE JAIL CRISIS. NACO HAS ALSO TAKEN AN ACTIVE ROLE IN THE DEVELOPMENT OF THE VERY SUCCESSFUL NATIONAL COALITION FOR JAIL REFORM.

IN 1978 AND 1979, NACO ADOPTED RESOLUTIONS ON JAIL REFORM LEGISLATION. MOST RECENTLY, NACO MEMBERS APPROVED A PLATFORM AMENDMENT CALLING FOR FEDERAL JAIL REFORM LEGISLATION AT THEIR 1980 ANNUAL CONVENTION. THE AMENDMENT CALLED ON THE FEDERAL GOVERNMENT TO "PROVIDE FINANCIAL AND TECHNICAL ASSISTANCE TO COUNTIES TO DEVELOP LOCAL STRATEGIES TO REDUCE JAIL POPULATIONS, AND TO DEVELOP HUMANE CORRECTIONAL FACILITIES AND SERVICES."

NACO IS ALSO ON RECORD IN SUPPORT OF PARTNERSHIP APPROACHES BETWEEN STATE AND COUNTY GOVERNMENTS FOR COMMUNITY CORRECTIONS, AND THE SHARING OF CORRECTIONAL SERVICES AND FACILITIES ON A MULTI-COUNTY BASIS WHERE FEASIBLE AND DESIRABLE. A SYNOPSIS OF A LEGISLATIVE PROPOSAL FOR FEDERAL JAIL REFORM LEGISLATION OUTLINES ELIGIBILITY REQUIREMENTS, INCLUDING A POPULATION OF AT LEAST 30,000 FOR SINGLE COUNTIES OR COMBINATIONS; THE ESTABLISHMENT OF A LOCAL CORRECTIONS ADVISORY BOARD, AND DEVELOPMENT OF A COMPREHENSIVE PLAN THAT WOULD INCLUDE EMPHASIS ON COMMUNITY-BASED CORRECTIONAL FACILITIES AND SERVICES. THE PROPOSAL ALSO RECOMMENDS ADVANCED TECHNIQUES FOR STAFF TRAINING AND THE DESIGN OF INSTITUTIONS AND FACILITIES AND CONTAINS ASSURANCES THAT THOSE COUNTIES RECEIVING FUNDS UNDER THE ACT WOULD COMPLY WITH RECOGNIZED STANDARDS. THE PROPOSAL ALSO REQUIRES THAT ANY STANDARDS PROMULGATED TO IMPLEMENT SUCH A PROGRAM SHOULD PROVIDE FOR EFFECTIVE INPUT BY LOCAL ELECTED AND APPOINTED OFFICIALS.

NACO IS PROPOSING COMPREHENSIVE LEGISLATION THAT WOULD PROMOTE:

- (1) ELIMINATION OF UNCONSTITUTIONAL JAIL CONDITIONS;
- (2) REMOVING FROM JAIL THE MANY PEOPLE WHO DO NOT BELONG THERE;
- (3) SHARING OF RESOURCES IN RURAL AREAS; AND
- (4) COMMUNITY ALTERNATIVES TO JAIL FOR NON-VIOLENT OFFENDERS.

AS NACO'S CRIMINAL JUSTICE AND PUBLIC SAFETY STEERING COMMITTEE ENVISIONS IT, THE JAIL REFORM ACT SHOULD BE STRUCTURED IN SUCH A WAY AS TO REQUIRE IMPLEMENTATION

OF ALTERNATIVES TO INCARCERATION AND MULTIJURISDICTIONAL SOLUTIONS IN RURAL AREAS BEFORE A COUNTY OR GROUP OF COUNTIES RECEIVES CONSTRUCTION OR RENOVATION FUNDS.

AS A CONDITION FOR FUNDS, FOR EXAMPLE, THE ACT COULD REQUIRE INTERGOVERNMENTAL AGREEMENTS IN RURAL AREAS, THE APPOINTMENT OF AN ADVISORY COMMITTEE, THE DEVELOPMENT OF A COMPREHENSIVE PLAN, THE ESTABLISHMENT OF RELEASE AND OTHER COMMUNITY PROGRAMS, AND THE DIVERSION FROM JAIL OR PEOPLE ACCUSED OF CERTAIN CLASSES OF OFFENSES. WE RECOGNIZE THAT ENABLING LEGISLATION AND/OR REVISIONS TO THE STATE CRIMINAL CODE MAY BE REQUIRED, BUT INCENTIVES FOR CHANGE CONTAINED IN THE ACT SHOULD PROVIDE THE IMPETUS FOR THESE CHANGES. A CLEAR DEMONSTRATION OF INTENT TO MAKE MAXIMUM USE OF ALTERNATIVES AND TO REDUCE JAIL POPULATIONS, SHOULD BE A FUNDAMENTAL REQUIREMENT, THE COMMITTEE RECOGNIZES THAT MOST OF THOSE IN JAIL COULD BE BETTER HANDLED IN COMMUNITY PROGRAMS.

THE CORRECTIONAL CRISIS AT THE LOCAL LEVEL IS MULTI-DIMENSIONAL. IT INVOLVES SUBSTANDARD CONDITIONS, A GENERAL LACK OF ALTERNATIVES TO INCARCERATION, AN OVERFLOW AND BACK-UP OF STATE INMATES IN LOCAL JAILS, A SURGE OF LAWSUITS AND LITIGATION, AND, ABOVE ALL, A SERIOUS ABSENCE OF COMPREHENSIVE PLANNING AND PARTNERSHIP RELATIONSHIPS BETWEEN STATE AND COUNTY GOVERNMENTS.

TITLE: "The Jail Reform Act of 1981"

Eligibility

a. Population Requirement

- A single county with a population of 30,000 or more or a group of contiguous counties with an aggregate population of 30,000 or more.

b. Corrections Advisory Board

- Basic to the Act is the requirement that participating counties must establish a corrections advisory board. This board must be representative of law enforcement, prosecution and defense attorneys, the judiciary, education, corrections, racial minorities, social welfare services and lay citizens. If two or more counties come together for purposes of implementing a joint corrections program, membership is shared among the counties at the discretion of the joint county boards. The advisory board is actively involved in the development of a local comprehensive plan and in reviewing the progress being made. In addition, the board is expected to provide the coordination which is needed to make an expanded community corrections systems a reality.

c. Comprehensive Plan

- The local comprehensive plan identifies correctional needs and defines the programs and services necessary to meet these needs. This plan is developed by the corrections advisory board and presented to the board of county commissioners for final adoption. The plan identifies existing community services, agencies and resources, analyzes the local criminal justice system and other related systems that impact on the jail. The plan shall provide an analysis of the jail population, address inappropriate confinement and specify how the county or group of counties plans to reduce jail populations to a minimum and to make maximum use of community alternatives to incarceration. The plan:

- ° provides satisfactory emphasis on the development and operation of community-based corrections facilities and programs, including pretrial release services, halfway houses, probation, restitution, community service and work release programs;
- ° provides for advanced techniques in the design of institutions and facilities;
- ° provides, where feasible and desirable, for the sharing of correctional institutions and facilities on a multi-county basis; and
- ° provides satisfactory assurances that the personnel training standards and programs of the institutions and facilities will reflect advanced practices.

d. Funding

1. The Act should contain language which would provide financial incentives to states to develop and implement community corrections programs in partnership with local government.
2. Provides adequate funding for construction or renovation with a 50 percent federal match.

AMERICAN COUNTY PLATFORM CORRECTIONS POLICY

It is the primary responsibility of the counties to ensure public safety and, at the same time, protect the constitutional rights of pre-trial and convicted persons. Most individuals in the local criminal justice system eventually return to their own communities. Counties are the best suited in providing to the individual basic social and physical environments, which can help him/her to take a more productive place in the community. Counties alone cannot assume the full financial burden of providing comprehensive correctional programs and therefore, need to make maximum use of intergovernmental arrangements to develop the capability of assessing the risk of an individual to the community and provide alternatives to incarceration for those that present little or no risk.

COMMUNITY-BASED CORRECTIONS. States and counties should place increased emphasis on correctional programs within local communities. Counties should locally determine and assess their needs in developing flexible treatment programs according to the available resources within their community.

INTAKE SERVICES. County governments are urged to establish an intake screening process for the purpose of determining the overall needs of persons charged and assessing risks in order to select persons charged for Release on Recognizance (ROR) pre-trial programs and to provide information to the county governing board, courts and other community agencies in determining needs for community services.

ALTERNATIVES TO INCARCERATION. Counties are urged to minimize the cost of incarceration by maximizing the use of existing community services. Counties should identify gaps in services and develop a systematic plan for implementing a range of alternatives to incarceration. Such programs might include ROR, work-release, half-way houses, drug and alcohol programs, vocational training, educational programs and restitution.

CONFINEMENT OF MENTALLY AND DEVELOPMENTALLY DISABLED. The federal government should reduce its budgetary emphasis on the reimbursement for institutionalized care and provide increased resources for community-based programs. The National Association of Counties supports the goal that the mentally and developmentally disabled should not be incarcerated in local jails and that programs to provide alternative institutional or community-based residential facilities and services should be developed.

INSTITUTIONAL SERVICES. Correctional institutions of any jurisdiction--federal, state or county--should provide humane living conditions and rehabilitation programs, as well as providing services for their offenders' well-being, i.e., medical care, recreation, counseling, etc.

MULTI-JURISDICTIONAL FACILITIES. States should authorize and encourage county governments through financial incentives and technical assistance to contract with other counties or with other local units of government for the joint establishment of correctional facilities and services.

QUALITY OF PERSONNEL. State and county governments should improve recruitment, compensation and specialized training to attract and provide sufficient numbers of high quality personnel to the corrections system. Minimum standards of qualification and training should be established and greater use made of para-professional and volunteer aides.

ESTABLISHMENT OF STANDARDS. States and counties should jointly plan and develop state standards for adult and juvenile detention services, personnel, and facilities. Technical assistance and financial incentives shall be provided by the state in order to assist counties in meeting standards.

FEDERAL CORRECTIONS ASSISTANCE. The federal government should provide financial and technical assistance to counties to develop local strategies to reduce jail populations and to develop humane correctional facilities and services.

Counties lack the financial resources both to improve substandard correc-

tional and detention facilities and services and to provide comprehensive community alternatives to secure detention for those inappropriately confined and since federal courts increasingly have mandated improvements in local correctional facilities and programs.

It is essential that greater emphasis be placed on local comprehensive planning and the sharing of facilities, programs and services wherever feasible on a multi-county basis. Any standards promulgated to implement such a program should provide for effective input by local elected and appointed officials.

Existing federal programs designed to provide health and mental health services, social services, educational and vocational training and employment services should be made available to local correctional and detention facilities.

NON-DISCRIMINATION. All corrections employment opportunities, as well as corrections programs and services should be available without regard to race, creed, sex, national origin or handicap.

[From Newsweek, Aug. 18, 1980]

THE SCANDALOUS U.S. JAILS

THEY ARE MUCH WORSE THAN PRISONS—THEY ARE HARSH WAREHOUSES, WHERE MANY OF THE INMATES ARE PRESUMED INNOCENT

Four inmates in the Claiborne County, Miss., jail share a cell with an open toilet in the middle. They never leave except to visit a relative in a nearby hall. Sheriff Frank Davis admits to running a poor jail, but asks, "What can you expect from a building constructed in 1845 and last renovated in 1901?" Judges consider the facilities so vile that they won't send minor criminals there.

Boulder, Colo., built its jail on the site of a half-finished hotel. Some people think the county hardly bothered to change the plans. Except for the maximum-security area, there are no bars. Each inmate lives in a private room. While jailers elsewhere still take away prisoners' belts so they won't hang themselves, inmates in Boulder can learn macramé. But they're not inmates; they're "residents," and the guards are "corrections specialists." In four years no one has escaped, but who wants the hassle? Says one resident, "This place is pretty mellow."

The Boulder jail may provide a far-out guide to the future, but the Mississippi scene is disturbingly typical of conditions across the nation. Almost every city and county has a jail; there are 3,500 in the United States (more than the number of municipal hospitals and community colleges combined), and they hold nearly half a million inmates a year. They are also, for the most part, dirty, dangerous, overcrowded, unhealthy and stupefyingly dull.

Over the past decade, as riots have exploded from Attica to Santa Fe to Boise, Americans have become conscious of the ugly state of their prisons. But prisons are massive edifices, usually tucked well away from population centers, and because they hold dangerous criminals for long periods, they offer at least some recreational and work facilities. Jails, by their nature short-term institutions, often do not even try to provide anything but cells. And most people have little idea how close some of them are to exploding. "The jails are much worse than prisons," says University of Illinois criminologist Daniel Fogel. "They are the worst blight in American corrections. And jails are at the front end of the system, where people are still presumed innocent."

Jails are warehouses, places where drunk drivers and petty thieves serve short sentences next to criminal defendants held because they can't make cash bail. The young and old, innocent and convicted, predatory and passive, middle-class and poor, men and women are hurled together into the criminal-justice system's Cuisin-

art where they are intermingled, spun about—and rarely emerge as they were. Says San Francisco's reform-minded sheriff Michael Hennessey, "My goal is for the inmates not to come out too much worse."

Americans have always put jails near the bottom of their priority lists, treating them a bit like local tarts: every town may have one, but the less said the better. Main Street citizens commonly ignored jails until a middle-class child is locked up among the disproportionately poor and black inmates and get brutalized. But jail conditions have outlasted most cyclical attempts at reform. Now the aim of most critics is not so much to alter the incorrigible jails as to keep as many people as possible out of them.

Ten years ago jails were even worse. Some improvements have come through the remarkable efforts of enterprising lawyers and bold judges who have forced change on jailers. "Jail reform in the '70s has been a creation of the Federal courts," says Robert Martin, executive director of the Massachusetts Correctional Legal Services. Reformers and inmates have sued about 10 per cent of the nation's jails, and other cases are in the pipeline. Sweeping, almost extrajudicial decisions have outlawed uncivilized practices in places as diverse as Dallas, Boston and Tuscaloosa, Ala. Judges have been insisting on practices that decent zoo keepers follow: the inmates need adequate heat, light, space, health care, diet and quiet. Yet even these simple rules still have not been universally accepted. Only last month a judge had to order the Choctaw County, Ala., jail officials to stop scraping dead animals off a nearby highway and serving them to inmates for dinner.

Deference

For a brief time in spring 1979 it looked as though the U.S. Supreme Court was trying to take Federal judges out of the jail-reform business. In a 6-to-3 decision in a case called *Bell v. Wolfish*, Justice William H. Rehnquist made two remarkable declarations. First, he dismissed the notion that defendants are presumed innocent as just another rule of evidence with little constitutional standing. Then he said that judges should accord jail administrators "wide-ranging deference." As a saving measure, Rehnquist added that inmates who have not yet been found guilty may not be punished, enabling courts to stop at least some punitive measures.

With *Wolfish* as a warning signal, lawyers have started looking for other strategies to force reforms. One of the most promising is now playing out in Florida, where jail inmates have brought a class action against the state corrections department for not enforcing the state's own laws requiring minimum standards and adequate inspection in Florida's 235 jails. "To bring a suit against each place, I would have to live to be 180," says Bill Sheppard, a Jacksonville lawyer helping direct the case. "What we're attempting is to get the state to do what it is supposed to. And if it works here, this could open up jails all over the country."

A second tactic is more personal. In recent years the U.S. Supreme Court has made it easier for citizens to sue local officials. Alvin Bronstein, director of the American Civil Liberties Union's national prison project, suggests that these precedents are ripe for application to jails, making wayward wardens individually liable.

Abuses

Even if a lawsuit against a jail is successful, changes don't occur quickly. "As a rule of thumb, you almost always must have at least one contempt citation to obtain compliance," says ACLU litigator Terry Smerling, who has successfully sued the Los Angeles jail, the nation's largest. Eight years ago three Philadelphia judges declared the city jail to be "a cruel, degrading and disgusting place." One appeal, three consent decrees, \$325,000 in fines and one contempt citation later, the jail has corrected many abuses. The inmates' mail isn't censored and telephones have been placed on the cell blocks. There are more guards, more programs, more medical care and better food. But Newsweek's Eric Gelman, who spent two days visiting Philadelphia jails, still found 2,400 inmates living in buildings designed for only 1,900. Most of the inmates stood around doing nothing and all seem to carry some sort of weapon, such as a sharp-edged spoon.

Overcrowding is chronic in almost all jails. In Seattle, four men are assigned to a cell the size of a Volkswagen Beetle. In De Kalb County, Ga., near Atlanta, prisoners sleep on the floor. "The big numbers affect everything else in the jail," says William Nagle, head of the American Foundation. "It puts pressure on eating, housing and programs. It raises the fear level, and it increases the turnover of the staff."

To make matters worse, more than 6,000 convicted felons are backed up in county jails because state prisons simply have no room. To some of these criminals, prison looks good by comparison. Jail inmates in Boston, Albuquerque and Warren County, Miss., have actually protested in an effort to get into prison. In both Louisiana and

Mississippi, sheriffs have loaded men into buses and rushed to state prisons, only to be met by officials with freshly signed court orders turning them away.

As environmental psychologist Richard Wener observes, overcrowding not only makes inmates irritable and aggressive but often literally makes them and the guards sick. The ensuing jump in violence and sick calls quickly strains jails' usually inadequate health-care facilities. According to a series of American Medical Association studies, many inmates can look for nothing more than an aspirin. "Ninety-nine per cent of these places are not up to our minimum standards," says AMA Correctional Program director B. Jaye Anno.

The mentally ill fare no better. In Philadelphia the chief jail psychiatrist estimates that he needs another 80 beds each day to handle his caseload. The Volusia County jail, near Daytona Beach, Fla., is more direct. There, mentally disturbed inmates have been handcuffed to an elevator where a guard can watch them. And in San Francisco the problem verges on bedlam. Newsweek's Michael Reese toured the city's Hall of Justice and reported:

They Scream

About one prisoner in twelve in San Francisco's jails is classified as mentally ill. Dr. Thomas Peters, head of the Health Department's jail services, said: "The law say mentally ill prisoners should be treated in hospitals, but the city's mental wards are full. We are forced to violate that law every day, and so is about every other county in California." The result is that disturbed patients are confined to isolation cells. The prisoners must be kept naked so they can't hang themselves. They are left without medication because it is illegal to administer even a mild sedative without an inmate's consent. Sometimes they just stand and scream until space can be found in a state hospital.

Violence is a never-ending jail problem. Weak, friendless or fresh inmates are routinely assaulted and sometimes raped. "It happens much, much more often in jails than in prison," says New York City Corrections commissioner, Benjamin Ward, who used to run the state prison system. Guards can't check much of the violence; most jails are woefully understaffed and old jails with their long cell blocks are impossible to watch most of the time. "I was here three days and didn't sleep a wink because I was scared," says San Francisco inmate Mike Armstrong. "You know what was scariest of all? Never seeing a guard."

Criminologists believe that one good place to begin reform is with jail guards, who are locked behind the same gates and suffer from some of the same frustrations as the inmates. "A jail is not a nice place to be and not the nicest place to work in either," says Gordon Kamka, Maryland's secretary of Public Safety and Correctional Services. The guards themselves need more help, more training and most important, a sense from their bosses that they are not in dead-end jobs serving dead-end people. "I've seen some of these little hell holes that were well run," says University of Toledo law professor Frank Merritt. "Much of the reason is staff."

Time Outdoors

The next step would be to give inmates something to do. Organized activities would not only end a great waste of time, but reduce tension and make jails safer. "Full programs and good security go hand in hand," says Arthur Wallenstein, warden of the highly regarded, but overcrowded, Bucks County, Pa., jail. If nothing else, jails could try to provide inmates with time outdoors. As an Oregon prisoner says, "Hell, I haven't killed anybody. Let me see the sunshine."

More drastic measures are called for by groups like the National Coalition for Jail Reform, an umbrella group composed of 28 organizations that range from the National Sheriffs' Association to the ACLU. The coalition wants to remove all the drunks, children and mentally disturbed people from the jail system. "They don't belong there," says coalition director Judith Johnson. "It's just inappropriate to use jails like that." Reformers also argue that new bail procedures would alleviate overcrowding. For instance, in February 1978, 28 percent of all inmates were in jail because they couldn't raise \$250 to buy a bail bond, and 32 percent more would have needed only \$1,000 to win temporary freedom. Many of these inmates, studies suggest, are released within a week anyway.

A final step, and one that most experts approach cautiously, is to build new jails. Splendid new buildings have gone up—particularly in the Federal system—that look more like college dorms than jails. Inmates have their own rooms with windows. They share living areas stocked with pool tables and color televisions. "You want to separate them into small groups who are relatively safe for each other," says jail architect Paul Silver.

Luxury

But most authorities doubt that these conditions will ever be common. Jails like Boulder's are expensive; estimates range up to \$52,000 per new bed. And once a building is open, judges and police will promptly use it. Jails, says Robin Ford, a consultant at the National Institute of Corrections Jail Center, are "capacity-driven institutions," that tend to fill up as soon as the ribbons are cut. The fact that the Boulder jail works and remains below capacity may be attributable to those "mellow" community conditions. "If you've got only a few prisoners, hell, you could take them home at night and let them sleep on the couch," says a Los Angeles County deputy sheriff. "But when you've got 400 murderers in a jail population of 5,000, you don't have that luxury."

The problem of jails will never be solved as one detached from the related problems of society itself. The difficulties don't begin in jail and they obviously don't end there either. Crises in health care, housing, jobs and education that continue unabated on the outside will resist cure behind bars. "If jails are in trouble, then it is because communities are in trouble," says Charles L. Newman of the University of Texas-Arlington. "The criminal justice system exists to respond to the dysfunctions in society and our jails, in particular, reflect our social problems." It may be encouraging that people are noticing how bad the nation's jails are, but no one believes that conditions will get much better any time soon.

[From Business Week, Feb. 9, 1981]

NEW JAILS: BOOM FOR BUILDERS, BUST FOR BUDGETS

FEDERAL COURTS ARE FORCING CITIES AND COUNTIES TO SPEND BILLIONS ON LOCAL LOCKUPS

A jail-building boom, fueled by more than a decade of federal litigation over prisoners' rights, is sweeping the country. F. W. Dodge reports that the total value of contracts awarded annually for the construction, expansion, and renovation of jails and prisons increased 602 percent during the last 10 years, from \$73.9 million in 1970 to \$529 million in 1979. Dodge, the country's ranking building-information service and a division of McGraw-Hill Information Systems Co., says the aggregate cost came to \$2.3 billion—and that figure does not cover the sums paid to fight the lawsuits that preceded many of the projects. More than 370 jails are being built or expanded now, most of them under court order. Given runaway inflation, no one will guess what the cost will be.

The surge of jail litigation began in the mid-1960's, when federal courts abandoned their previous hands-off position on prisoner-rights cases. Prisons, too, came under attack. But the states, which operate prisons (facilities for long-term detention), are generally better equipped financially to comply with court orders than are cities and counties, which operate jails (facilities for short-term detention). So the judicial campaign has had its heaviest impact on local governments.

The cities affected range from New York, Pittsburgh, and Houston to Winslow, Ariz., which spent \$850,000 on a new jail—\$85 for each of its 10,000 residents—after its old jail was challenged in court as overcrowded. By one estimate, 1,300 of the nation's 3,500 jails are now under court orders or are likely to be. Another estimate claims that 90 percent of all U.S. jails do not meet the minimum standards being established by the courts—and thus are likely targets for the class actions that prisoners continue to file against local governments already struggling with rising costs and shrinking tax dollars.

The constitutional issue

Under the circumstances, officials are turning to such money-saving options as regional jails and alternate means of handling alcoholics and others who traditionally have been incarcerated. The trend dovetails with the growing conviction among corrections experts that such prisoners do not belong in jail in any case.

Typically, most courts establish jurisdiction in jail cases on the ground that poor conditions of confinement—overcrowding, bad food, and lack of sunlight, exercise, and medical care—violate the Eighth Amendment ban against cruel and unusual punishment. On this premise, courts can order wide-ranging changes dealing with everything from buildings to grievance procedures and weekly laundry schedules.

In Pittsburgh, for instance, Allegheny County has obeyed a court order to upgrade psychiatric care at its jail by adding 24 new jobs. Harris County, Tex., which includes Houston, has spent \$57 million to build a new 14-story jail as part of a 1978 consent decree. County officials hope to open it in 1982, but three floors are unfin-

ished, and it will take \$12 million to complete them. "Costs are a bear, but we've got to take care of the problem," says, John J. Klevenhagen, a major at the Harris County Detention Bureau.

Because nearly half of all U.S. jails are more than 30 years old, even extensive renovation may not bring them into compliance with court orders. As a result, many local governments must build new jails. And according to Dodge, construction costs are running at \$108 per sq. ft.

No money

To pay the bill, local governments often sell bond issues, even through interest rates are at an all-time high. Dallas, Houston, and Kansas City, Mo., have followed that course. But fiscally conservative voters frequently turn down bond-issue proposals. In El Paso County, Tex., where a proposed bond issue failed on its first attempt, "it became a very emotional issue," says Robert O. Viterna, executive director of the Texas Commission on Jail Standards. "People were saying things like, 'Put the prisoners in pup tents behind barbed wire and give the guards machine guns—that's good enough.'"

Boston is finding itself unable to build the new \$28 million jail that was part of a court settlement. To achieve the 27% reduction in the city's 1981 budget made necessary by passage of Proposition 2½, which limits property taxes, Mayor Kevin White has put a freeze on all capital projects. "How can the court order the city to spend money it can't raise?" asks Sheriff Dennis J. Kearney of Boston's Suffolk County.

Political risks

Indeed, jail administrators who press too hard for money for jail improvements may be courting trouble. In Bexar County, Tex., jail administrator Norman R. Cox Jr. was fired last October after campaigning for \$250,000 in county funds for the jail. Former Sheriff Rudy Garza accused Cox of attempting to turn the jail into a country club. To avoid Cox's fate, officials often welcome the suits that force them to act. "The suits help the administrator get what he has been espousing for a long time," says Anthony P. Travisono, executive director of the American Correctional Assn., a professional group in College Park, Md. "But to live through them is a real crisis."

Despite the crises, costs, and political risks, the typical reaction to jail litigation or its prospect has been to build new jails. Basically, says Robin C. Ford, a director of the National Criminal Justice Collaborative Inc., a consulting firm in Sea Island, Ga., "Americans are convinced that more jails equal less crime."

Yet psychologists such as Ford insist that "crime rates do not correlate with jail size." They emphasize that the country already jails too many of its citizens. It would be better, they say, to build fewer and smaller jails and find alternate means of treating chronic alcoholics, juveniles, the mentally ill, and persons awaiting trial on minor charges. Such advocates argue that these changes would alleviate overcrowding and make jails more effective for those who should be incarcerated. Also, they say, their recommendations could save money and help cure people who need treatment rather than repeated imprisonment.

VOTERS HAVE TURNED DOWN THE BOND ISSUES NEEDED TO PAY FOR JAIL CONSTRUCTION

Here and there, local governments have followed this advice. Fifty-seven Montgomery County (Pa.) police departments send drunks, drug addicts, and prisoners with psychiatric problems to Montgomery County Emergency Service Inc., which operates a private, nonprofit, 30-bed hospital in Norristown. The cost of care averages \$300 per patient, but 97 percent of all bills are covered by private insurance, Blue Cross & Blue Shield Assns., or public assistance health programs.

In Palm Beach County, Fla., where Comprehensive Alcoholism Rehabilitation Program Inc. (CARP) treats people inebriated in public, officials say the program has helped them meet a court order to put a lid on the jail population. CARP Executive Director Robert P. Eozzone estimates the per-diem cost for primary care, counseling, and referral services at \$3, compared with the national average of \$40 spent daily for each jail inmate.

Alternatives to jail

Programs to speed pretrial release and to prevent the pretrial jailing of some suspects also are under way. Instead of arresting and jailing people charged with misdemeanors, New York City issues citations that must be answered in court. In Indianapolis, a chief bail commissioner, assisted by 15 law students working part-time, sets bail on arrests for major as well as minor crimes. One of the commission-

er's options is to release a prisoner who pays a 10 percent cash deposit on his bail. If the prisoner fails to show up for trial, he is liable for the full amount, and Indianapolis officials say that only 3.5 percent fail to appear. Other measures elsewhere include releasing on their own recognizance—in effect, in their own custody—persons accused of minor crimes, releasing them in the custody of third parties and into pretrial job programs.

In San Mateo County, Calif., where officials back in the 1960s predicted that jail capacity would have to triple to 1,500 beds, the jail is still adequate because a recognizance project functions as an investigator for the courts. Staffers recommend which persons arrested should qualify for release without bail. From January to November, 1980—the last period for which figures are available—some 1,400 people were released after one day in jail, resulting in an estimated saving of \$500,000.

Share the load

Not everyone applauds such programs. Responding to a court order that limits the population of the Duval County Jail to 418, Jacksonville (Fla.) officials have adopted several alternatives to pretrial detention. But, complains Fred W. Murray Jr., director of jails, corrections, and work release, "actually, we're putting people out on the street that we would rather not put out."

Another alternative is regionalization. More than 2,300 of the nation's jails each hold less than 22 inmates, but combined, they house 34% of the total jail population. Since most are in rural areas, they often lack sufficient resources. "In towns without a doctor, how can you talk about medical care?" asks M. Kay Harris, a director of the National Council on Crime & Delinquency in Hackensack, N.J.

INSTEAD OF JAILING PEOPLE, SOME EXPERTS SAY, TREAT MINOR CRIMES DIFFERENTLY

To solve such problems, six counties in northeastern Minnesota share a regional corrections center, a juvenile detention center, and a probation and parole service in Duluth. The state pays \$2 million of the \$4 million annual budget, and the remainder is split among the counties on a per-population basis. "We couldn't afford to run these facilities by ourselves," says St. Louis County Commissioner Deidre Dodge. "We're spending less money this way than if we ran everything ourselves." One indication of savings: The system operates with 42 fewer workers than were employed for similar services before regionalization.

But this concept, too, meets with some vigorous oppositions. The National Sheriffs' Assn.—whose members lose power under regionalization—protests that prisoners must be transported as much as 100 mi. and claims that remaining in his community helps rehabilitate a prisoner. Splitting costs to the satisfaction of local officials also can be a ticklish affair, and local pride can stand in the way of regionalization. Nevertheless, says David E. Gustafson, director of Arrowhead Regional Corrections in Duluth: "Eventually people are going to be hauled, kicking and screaming, into regional systems. It has to happen, especially with the shrinking tax dollar."

Senator DOLE. We have three additional witnesses, and I will ask you all to come forward. You are not members of a panel, but maybe we will be able to save a little time.

Normal Darwick, executive director of the International Association of Chiefs of Police; David Braunschneider, executive director, International Halfway House Association; and Richard C. Conklin, chairman, Committee on Architecture for Justice, American Institute of Architects.

Mr. Darwick, you may proceed, followed by Mr. Braunschneider, and then Mr. Conklin.

STATEMENT OF NORMAN DARWICK, EXECUTIVE DIRECTOR OF THE INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE

Mr. DARWICK. Mr. Chairman, Senator Bumpers, members of the subcommittee.

I appreciate this opportunity to testify regarding a Federal program of assistance to State, and local criminal justice agencies for planning and construction of police headquarters, courts, and other criminal justice facilities.

The International Association of Chiefs of Police maintains among its 13,000 members the executive head of agencies providing full police services to approximately 98 percent of the U.S. population at Federal, State and local levels. We also have members in 59 other nations throughout the world.

The International Association of Chiefs of Police supports S. 186. We have been active in providing direct criminal justice facility design assistance to local agencies since the early 1960's. Our current staff played a major role in assisting agencies in the design and construction of criminal justice facilities in several cities, counties and States: First, Saint Croix, U.S. Virgin Islands; second, East Chicago, Ind.; third, Lancaster City and Lancaster County, S.C. fourth, the city of Boise and Ada County, Idaho; fifth, the public safety and criminal justice systems of the Navajo Nation and Eagle Pass, Tex., and several regional public safety facilities.

We continue to offer several levels of architectural assistance depending on local desire and financial capabilities. Our preferred and most effective methodology in providing staff assistance in the construction of criminal justice facilities is through a process of first conducting a comprehensive administrative and operational study of the agency(s). Upon completion of this study, we then work with our associate consulting architectural firm and together design a building that meets the specific recommendations for operational improvement contained in the report. This appears to be the critical relationship that is absent from most other facility designs. In the absence of this methodology, local jurisdictions generally employ a local architect with little or no expertise in criminal justice facilities. He then perpetuates existing police management and operational deficiencies by designing them into the new facility.

The amount of criminal justice activity within the States is continuing to increase. For example, in 1978 index crime increased 2 percent, in 1979, 9 percent, and in 1981 we saw double-digit increases in crime, and the first quarter of 1981 shows increases reaching into double digits.

Criminal justice physical plants generally tend to be obsolete and overcrowded. We find that many police facilities were designed as long as 50 and even 75 years ago. Their designs were often intended for a purpose other than housing a modern police agency.

If they were in fact intended to house a law enforcement agency, the agency has long surpassed the personnel numbers which the facility was programed to accommodate. Second, contemporary law enforcement management and technology has changed significantly in those ensuing years.

State and local financial resources are being strained by citizens' demands for service. Many communities have in fact been forced to cut back on law enforcement services and personnel. Local funds for construction are becoming rare.

In the case of correctional facilities, the situation is critical. Inmates are indeed being housed in facilities that are inhumane, unsafe, and not at all conducive to rehabilitation. Courts are placing more and more convicted persons on probation, not because they do not cause a threat to society or are not in need of professional counseling, but because of the revolving prison door. When

one goes in the front door, one or more exit from the rear because of overcrowding.

Police training in the past several years has advanced far beyond the point where local police facilities can meet the demands of seating, acoustics, privacy, or equipment requirements.

It has been our experience that police officers and police agencies project an image closely alined to the facility from which they work. Public confidence in the police is likewise affected by the physical appearance of the facility from which the police, court, and correctional components of the criminal justice system operate.

You may also want to consider the level of crime in addition to population for allocating funds. Police agency size is affected by crime, and crime is affected by such factors as population density, age, and stability, economic and cultural conditions and climate. Therefore, raw population is not necessarily an indicator of community criminal justice needs.

There should be some requirement that competent criminal justice expertise be coupled with professional architectural firms to assure a facility design that will include both modern design technology and contemporary criminal justice management and operation theory.

To conclude, we agree in concept with the bill's proposal to financially undertake comprehensive criminal justice programs. The facilities are needed, and the proposal warrants diligent consideration.

I offer you the services and facilities of the International Association of Chiefs of Police as you pursue this project.

Thank you.

Senator DOLE. Senator Bumpers?

Senator BUMPERS. I just want to say, and I think we have an architect, Mr. Conklin, from the American Institute of Architects, and I am sure he is going to cover this.

You know the first facility built in my State, our State prison, was under the aegis of Governor Rockefeller who preceded me. It was a maximum security unit, and the first time I went down there, they had just completed it, and it was really a magnificent looking facility. I looked at it and I said, "It is really a tragedy that we don't have more facilities down here like it."

I looked at it, and I thought, there is no way that anybody can escape from this, but it really is a maximum security unit. I went back 3 years later and the place was an absolute wreck, just a shambles. I don't mean that in the literal sense of the word, but I was amazed at the ingenuity of inmates to tear a place up.

It is certainly no reflection on the architects, but the points you have made are certainly well taken. You do have a tendency to hire local architects, and some of ours are now gaining some expertise as a result of our past mistakes, but those who have developed a national reputation for building those facilities that have proved to be the most durable, the most efficient, and the most effective, are the kinds that we ought to be using.

That is just a comment, Mr. Chairman.

Senator DOLE. I think that is correct, and Mr. Conklin can touch on that.

You mentioned also in your statement, Mr. Darwick, that there ought to be some way to assure facility design. I am sure that Mr. Conklin will touch on that.

We do have another factor in our bill, in addition to population, and that is criminal justice activity, which I would hope would be broad enough to cover the areas you suggest.

As I see it, from the lay point of view, population by itself would not be enough. We do need to consider other factors as you outlined in your statement.

As I have said to other witnesses, as we move into the next stage of this legislation, we will be calling upon your association for assistance.

We appreciate your testimony, and unless you have to leave right away, maybe we could hear the other witnesses, and it may stir up some other questions.

We are happy to have Senator Heflin join us now. I don't know who else has joined us with a hammer, but maybe we could find out if they are trying to get in or out.

Mr. Braunschneider, would you begin?

**STATEMENT OF DAVID BRAUNSCHNEIDER, EXECUTIVE
DIRECTOR, INTERNATIONAL HALFWAY HOUSE ASSOCIATION**

Mr. BRAUNSCHNEIDER. Mr. Chairman, members of the subcommittee:

The International Halfway House Association is a private, not-for-profit membership organization of 2,500 professionals in the field of community-based residential treatment which was started in 1964. IHHA is grateful for the opportunity to comment on S. 186, the Criminal Justice Construction Reform Act, introduced by Senator Robert Dole in January of this year.

While recognizing that the provisions of S. 186 apply to a broader definition of "criminal justice facilities," IHHA's comments today will be limited to the more narrowly defined area of correctional facilities.

It is our understanding that S. 186 proposes to provide supplemental funds to States for the purpose of constructing new and improving existing correctional facilities. There is a widely recognized need for such assistance and few could deny that the present condition of most existing correctional facilities in America is deplorable and in a rapidly deteriorating state.

Prison overcrowding and the accompanying problems overcrowding creates have reached critical proportions in many areas of the country. One need hardly be reminded that overcrowded conditions were significant contributing factors to the Attica and Santa Fe riots, and the more recent disturbances in Michigan prisons. Michigan's Governor, in fact, had hardly completed invoking emergency powers to relieve overcrowding in State prisons before trouble broke out.

These are not isolated instances, either. Prison disturbances are becoming commonplace and seem to occur with increasing regularity. Many States are currently under court order to reduce their prison population.

In acknowledgement of this situation, IHHA supports the spirit of S. 186 and commends the Senate for its demonstrated concern

and desire to take a leadership role in alleviating these debilitating conditions. At the same time, IHHA regrets that the provisions of S. 186 do not emphasize what we regard to be a viable, cost-effective alternative to the construction of more prisons, and that is the increased and expanded usage of community-based correctional facilities.

It is true that community-based correctional facilities and half-way houses are specifically mentioned in the definition of correctional facilities as found in section 102 of the bill. However, there is no wording in the bill which specifically emphasizes their increased and expanded use in helping to solve the problems presently being experienced by our Nation's prisons.

It is the position of IHHA that States will not be motivated to take advantage of the services provided by community-based programs unless there is a clear-cut mandate to do so in the provisions of this bill. It is further the position of IHHA that without an accompanying mandate to deinstitutionalize qualified inmates, in conjunction with an expanded program of prison construction, the desired results of this bill will not be realized.

To substantiate these positions, I will submit two examples. The State of Indiana recently commissioned a study to evaluate the economic impact of a community corrections subsidy plan. The results of that study showed that a full 25 percent of the present State prison population could qualify, under fairly strict guidelines, for release to some type of community-based program at a savings to the taxpayers of \$9.5 million.

While facts such as these are known, there has been no obvious move by other States to commission similar studies to determine the feasibility of deinstitutionalization in their jurisdictions. Yet, virtually every State is complaining of overcrowding and inadequate facilities.

The second example is in the State of Missouri. Eighteen private community-based agencies have pledged 276 beds to the Department of Corrections for every day of the year at an average turnover rate of four per bed per year, or a potential total of 1,104 inmates.

The Missouri Department of Corrections is decrying the overcrowding in its prisons, yet has not taken up that standing offer. In fact, one large private agency in St. Louis recently had to close one of its facilities because there were not enough clients to warrant keeping it open.

While these are isolated examples, they are not atypical of the prevailing attitude among the States today. States are not taking full advantage of alternatives which presently exist and could already go a long way toward alleviating the overcrowded conditions being experienced.

Senator DOLE. I might say on that point, based on those two examples, I have asked the staff to contact the appropriate authorities in the State to why it has not.

Mr. BRAUNSCHNEIDER. There is no reason to suspect that they will either, should Federal assistance become available to them to construct additional prisons.

Prison construction alone is not the answer, for it is highly doubtful that construction could keep pace with the rate of increase in the prison population.

The United States already has one of the highest incarceration rates per 100,000 population of any major western nation. In 1979, our national prison population reached an all-time high of 307,384. Dr. Harry Allen, chairman of the Administration of Justice Department at San Jose State University, and a recognized authority on corrections, has predicted that based on a straight line projection of current trends, the national prison population could reach 1.2 million by the year 2000.

If Dr. Allen's predictions are anywhere near accurate, their implications in terms of construction and maintenance costs are staggering and barely comprehensible. Average costs of prison cell construction exceed \$30,000 today and, Dr. Allen predicts, could climb to \$111,000 in the future.

Senator, I realize that I am out of time, and I will just condense my comments. Specifically, IHHA has four recommendations with regard to S. 186. The first recommendation is that community-based correctional facilities must be specifically identified in each State's plan, and that a specific proportion of the dollar amount allocated to the States for correctional facility construction must be delegated to community-based facilities.

The second recommendation is that each State would satisfactorily demonstrate that it is already making the maximum use of existing community-based residential treatment programs before qualifying for funds to construct new prisons.

Third, IHHA would recommend that States, when developing comprehensive plans for correctional facilities, be required to receive input from private agencies which provide community-based correction services on a contractual basis.

Studies on recidivism rates and successful program completion have demonstrated that private agencies have statistically significant success ratios, as well as consistently lower cost factors when compared with similar facilities that are publicly operated.

Finally, IHHA would recommend that the present wording of the bill which would exclude private agencies from receiving funds under this legislation be changed to allow them to receive part of that funding allocation. Once again this is in recognition of the service that they are providing today, and as the demands on the States are increased in the future, likewise the demands on the private facilities will be increased as well.

Thank you.

Senator DOLE. Thank you.

Your entire statement will be made a part of the record, and that is true in each case. If you have a moment or two, maybe we can hear from Mr. Conklin because he touches on an area of concern to all of us.

Mr. Conklin.

STATEMENT OF RICHARD G. CONKLIN, CHAIRMAN, COMMITTEE ON ARCHITECTURE FOR JUSTICE, AMERICAN INSTITUTE OF ARCHITECTS

Mr. CONKLIN. Mr. Chairman, Senator Bumpers, Senator Heflin.

My name is Richard Conklin. I will abbreviate my remarks today, and submit the full text for the record.

I am a vice president of the international architectural and engineering firm, DMJM, or Daniel, Mann, Johnson, & Mendenhall, with headquarters in Los Angeles. My firm has examined and undertaken the design of many correctional and justice related facilities throughout the Nation.

I present my remarks regarding S. 186 on behalf of the American Institute of Architects, the national association representing the architectural profession.

The AIA has been active in the area of justice facility planning and design for many years. The institute's Committee on Architecture for Justice, which I chair, was established in 1972 by an AIA Board of Directors. The committee's concerns now extend to the entire justice network, including law enforcement and court procedures.

Our professional program has included extensive and continuous liaison with other concerned organizations, an annual touring exhibition of new design work for the justice system and a publication entitled "The Design Resource File for Planning Justice Facilities."

Our committee is not only concerned with building new, acceptable facilities for those who require incarceration, but also we are involved in the study of diversionary programs and alternate methods of treating offenders. However, we will not deny the obvious crucial need to revise or replace those inhuman housing conditions for incarcerated human beings that exist all around us.

With the unanimous endorsement of the members of the Architecture for Justice Committee, the institute supports the general provisions of S. 186. We applaud the objective and timeliness of Senator Dole's proposal and fully understand the urgent legislative need which the bill addresses.

The growth in Federal, State, county and city inmate populations since the mid-1970's has far outdistanced facility capacity and construction and has resulted in overcrowded conditions too often characterized by a lack of security, prisoner safety, and control. It is not uncommon to find correctional and detention facilities housing two to four times their design capacity in any part of our Nation.

The majority of justice facilities in use today across the Nation were constructed in the late 19th and early 20th centuries. These relics are generally inflexible, and unsuitable to accommodate contemporary penal philosophy and functions.

Too often the excuse is used that they cannot be vacated to allow for remodeling because interim housing provisions cannot be obtained. Frequently there is no excess capacity to be found anywhere to hold the overflow of prisoners even if local detention facilities are used.

Today's law abiding citizens demand faster, tougher penalties for criminal acts, yet they are reluctant to fund proper housing requirements for the offenders. This attitude unfortunately coincides with the demise of previous Federal matching funds that encouraged the development of adequate criminal justice facilities. To add to this problem, many court systems have mandated placing pris-

ons under receivership or even releasing prisoners earlier than sentences require.

Architects who have done work for the Nation's prisons, jails and other justice facilities are acutely aware of severe conditions in our existing inventory of facilities, conditions which are no longer considered humanely adequate and are in desperate need for immediate improvement. The Dole legislation recognizes these conditions and the need for reform today. Delay can no longer be accepted.

I realize that any architect who supports Senator Dole's important proposal may be suspected of a subjective, self-serving interest. The truth is, however, that many architects are most knowledgeable of the conditions that do exist in many detention facilities across the Nation, and are also vitally concerned with the lack of prisoner and citizen safety, security, and controls perpetrated by those facilities.

Studies have shown that most recent prison riots are a result of these poor conditions. I have personally inspected more than 50 prisons, county jails, and city jails within the past 5 years, and consequently speak from first-hand observation of those conditions.

Not all the problems and needs are in correctional facilities. There are court facilities that are also overtaxed and inefficient. We are therefore pleased that the bill is comprehensive enough and not limited to funding of detention facilities alone.

An important feature of the bill, which we do support, is the requirement that each participating State produce a comprehensive plan for the development of its facilities over a 7-year period.

We also feel that the final version of the legislation should address the following concerns, and I will be very brief.

First, the AIA is hesitant to recommend the establishment of yet another Federal agency to impose more standards and regulations as a condition for construction funds being made available to city, county, or State agencies.

Second, we are concerned that State rights might be usurped and that local planning preferences might be ignored by regulations established by the Federal Government as a condition for receiving financial assistance. Yet we do understand that some kind of qualification criteria will be necessary to insure a fair and equal consideration of communities that require criminal justice facilities.

As a profession we promote the continued development of a consensus of standards that would reflect informed state-of-the-art opinion of what jails, prisons, and courthouses should be like.

In conclusion, the AIA appreciates the fine work of Senator Dole and his staff in bringing this valuable attention to a policy area that has been neglected at all levels of government.

The institute offers this subcommittee, and the entire Congress its support in identifying and carrying out necessary improvements in our criminal justice system. We believe that S. 186 is an important step in that direction.

Senator DOLE. Thank you.

Senator BUMPERS.

Senator BUMPERS. This is probably more in the nature of a comment, but I want to say, first of all, that this bill is not a carrot and a stick, it is more of a carrot. We are not proposing to penalize the States if they don't choose to take advantage of it.

Senator Dole drafted this bill. I have thought of it for a long time, but he drafted this bill and he introduced it, and he has already said and I concur wholeheartedly, neither of us hold this bill out as any kind of a panacea for the problems we are trying to address, except on a short-term, temporary basis.

I do think that States ought to develop master plans for dealing with their correctional problems, whatever they may be. I think that those plans ought to be in place before we start doling money out, even though they are going to be asked to come up with some money on their own. There is no 50-50 formula here.

Second, I want to say that I subscribe to halfway houses. We have a few in our State. They are not always welcome in every section of every community, but they do serve a very useful purpose for those least threatening to society, particularly, to enable people to work their way back into the mainstream of society, which is a much more sensible way than just turning somebody loose with \$10 in his pocket and a new suit of clothes, and saying, "You are on your own."

Having said all of that, we all know that the criminal justice system in this country is at the point of absolute collapse because of the problem we are trying to address here, namely, we have a lot more people coming into the system than we are capable of handling, either at the State or the national level.

In my own mind there is no doubt that a lot of crime is being perpetrated and committed by persons who are either out on bond and ought not to be, who are either out on bond and committed a previous offense, or who have committed a crime which suggests that they are not fit to live in a free society.

In any event, we live in a society where, as I said in my opening statement, people are absolutely hostage to their fear of being victimized. You hear all kinds of estimates about how many handguns there are in the country, somewhere between 60 and 100 million. You hear the statistic, and I have no reason to doubt it, that every third automobile you meet out on the highway has a pistol in the glove-compartment. We have a homicide rate about nine times higher than any other nation on Earth.

Those ought to be alarming statistics to anybody. You can talk forever about how society is failing these people. I am not going to argue that point—the educational system, the Government's failure to provide adequate mental facilities.

There are a whole host of reasons for the predicament that we find ourselves in, but the solutions to those problems are long-range. I might say, I don't see any great, firm commitment on the part of Congress or the American people to deal with those long-range problems.

So, what is the next best thing to do?

If you are going to provide any relief at all to the American people, the next best thing is to take people off the streets who have demonstrated time and again that they are not capable of living in a free society. I know that \$6.5 billion is a drop in the bucket when it comes to addressing this problem.

I am not suggesting that we develop a society where we just lock everybody up summarily and leave them there to rot. I believe, for example, if you want a child abuser, you abuse a child, and he will

grow up to be a child abuser. If you want an animal, treat him like an animal, and he will be an animal.

Not a single witness today has testified to anything, except that the conditions in the jails and the prisons of this country are deplorable, that we have an entry rate into the correctional system that is much, much higher than the system's ability to absorb.

I just feel that you can talk around this problem all day long, and you are not going to get at it. I know a lot of the root causes of the crime. I am not a penologist or a criminologist, so I don't know all of them, but I know a lot of the root causes. I used to try a lot of criminal cases when I was a trial lawyer.

I think that this bill—and I hate to say this—but I think as long as David Stockman in OMB is opposed to it, the chances of getting passed are not very good. But I would be willing to make a commitment this big, and much bigger, because I think this may be a much more troubling problem for this country than inflation is, for example. It is a terrible indictment of our society that we have come to this point.

Those are just some comments that I wanted to make for the record, Mr. Chairman.

MORE EDUCATIONAL OPPORTUNITIES

Senator DOLE. I appreciate it very much, and I hope there is some recognition at the OMB level. I know that there is interest at the White House level, and also at the Justice Department. It seems to me that it should have a very high priority even in a time of austerity, and perhaps we can at the appropriate time discuss this with OMB.

I have just one question for Mr. Braunschneider. You heard reference, already this morning, about Chief Justice Burger and his comments before two groups of graduates, with reference to upgrading staff education as well as more educational opportunities for inmates themselves.

Have you had a chance to give that proposal any thought? If so, what would your reaction be?

I have noticed on local television, interviewing some inmates, they thought it was a great idea. At least they would have an opportunity. I am sure that there is some now, but the Chief Justice would also mandate participation in educational programs.

There has been a fair amount of comment about it. Some have said that the speech has been made, but it will be forgotten as most other things are forgotten when you are talking about the improvement of those who may be incarcerated. This is the point that Senator Bumpers just made.

Do you have any thoughts on what the Chief Justice is recommending?

Mr. BRAUNSCHNEIDER. Senator, I did not read the transcript of his speech. I have read transcripts of some of his other speeches. I think I have to be in agreement with that.

I think you have to realize, too, that in order for rehabilitation, education, training, that type of program, to be effective for the individual, the atmosphere in which that program is provided must be conducive to learning. Unfortunately, that atmosphere is not

present in the correctional facilities and institutions in the United States today.

I don't think that this is a condemnation of anybody. I think it is just a statement of the factors that exist in prisons today, they are dehumanizing. It is a matter of survival. The inmates inside prisons today, if they get from one day to the next without being stabbed, raped, assaulted, extorted, or anything else, that is a major accomplishment.

So I think that for rehabilitation programs to work, or educational and training programs to have any kind of an impact and effect on the offender, the atmosphere in which those programs are presented has to be conducive to learning. They have to first not be afraid for their life before they can learn how to handle a job, or any kind of life skills training.

Senator BUMPERS. Mr. Chairman, would you yield at this point for a question at this point?

Senator DOLE. Surely.

RECIDIVISM RATE

Senator BUMPERS. Do you have any evidence, statistically or otherwise, that the recidivism rate among people who leave a correctional facility through a halfway house is any less than it is among those who are just turned loose summarily from a correctional facility?

Mr. BRAUNSCHNEIDER. Senator, there have been a number of studies done, I would say, within the past 10 years, many of them have been in the Northeastern part of the country. Massachusetts is a State that has been examining itself virtually on a year-by-year basis.

Some of the studies that I have read and the statistics that I have seen show that there is a significant decrease in recidivism rate, for the period of study which is typically about 1 year following release, for those inmates who go from the institution to a halfway house or prerelease facility.

Senator BUMPERS. Of course, you only take those most likely to be able to accommodate themselves to that; do you not?

Mr. BRAUNSCHNEIDER. Yes, sir.

Senator BUMPERS. People who have demonstrated a propensity for criminal violence are normally not candidates for halfway house release, are they?

Mr. BRAUNSCHNEIDER. That is correct, Senator.

There are only certain types of offenders who have benefited the most from the residential treatment facility. Typically these are not violent offenders. I don't think anybody would suggest turning animals loose on the street among society.

Senator BUMPERS. How does the cost of the halfway house compare with the incarceration?

Mr. Chairman, you have probably seen that first volume study. In my State, I think we spend about \$2,500 per year per inmate. New Hampshire, on the other hand, spends about \$15,000 per year per inmate.

Do you know what the national cost is for keeping people in the halfway houses?

Mr. BRAUNSCHNEIDER. Typically, Senator, it is between \$9,000 and \$12,000, significantly less than it is in the institutions, and that is primarily because the types of offenders who are put into the halfway houses don't require the strict custodial services.

Senator DOLE. Did you say, \$9,000 to \$12,000?

Mr. BRAUNSCHNEIDER. Yes, sir, \$9,000 to \$12,000 as compared to \$25,000 or \$30,000.

Senator DOLE. You indicated in one of the examples, either Indiana or Missouri, that it would be a savings of about \$9.5 million.

Mr. BRAUNSCHNEIDER. That was Indiana, sir.

Senator DOLE. Mr. Conklin, you indicate that we need to develop some uniform building design standards to be imposed in this program. There is some concern that we might be freezing the state of the art if that were done.

You spoke in your statement about many of these prisons were built in the late 1800's or the early 1900's, and not much change has been made. There is always some question that we might freeze the state of the art.

Do you mean the testing and evaluation of building materials, such as that performed by the National Bureau of Standards and Underwriters Laboratories? I am not sure how that would work in practice. We don't want to freeze the state of the art.

Mr. CONKLIN. No, Senator, and I am glad you asked that. I did want to expand on the AIA position.

The standards that we are referring to are performance, health, safety, and security standards that should be acknowledged within the design. We are not in favor of a standardized architectural design approval agency.

We have had an agency like that in the past, the National Clearinghouse for Criminal Justice Facilities, and it received much criticism. I think this committee has heard the criticism that it resulted in a number of look-alike facilities, as though there was one cure-all plan that could be used universally to solve the problem. Our chief interest lies in the establishment and application of performance, space, and safety standards that would serve as guidelines for the design of justice facilities of all types. These should be articulated so that they promote the development of innovative, but responsible, design solutions that would, in the hands of experienced architects, produce improved facilities that satisfy specific needs; we would not support the development of "universal" or stock plans for such highly specialized buildings.

Senator DOLE. Like the National Guard armories all look alike, and all the prisons look alike.

Mr. CONKLIN. Yes.

Senator DOLE. That is not what you had reference to, then?

Mr. CONKLIN. No.

I am delighted with some comments made this morning relative to the convertibility of facilities. You know, buildings, like architects and Senators, cannot be all things to all people, but they can be designed with a great deal of latitude to accommodate future conversion to other uses. We have simply not been charged with addressing that problem in the past, as it relates to prisons.

Senator DOLE. Senator Heflin.

Senator HEFLIN. First, Mr. Conklin, back to what Senator Dole had inquired about Chief Justice Burger's speech. As I have read his speech, as I recall he first stated that there ought to be a professionalization of correction institutional personnel.

I think Mr. Velde, when he was with LEAA, moved somewhat in that direction. He advocated a national academy, similar to the FBI Academy, for the training of prison personnel, and that was preliminary. His second thing was the education of inmates.

As I remember, he had two categories. One category of teaching inmates, who could not read or write, so that they could read and write; No. 2, a vocational education program.

The part I am raising is that in the architectural basis for this, should language in this bill be changed so that we could have those facilities for vocational education, some type of classrooms, and that sort of thing?

It has been a while since I read the proposed bill, but is there language, in order to carry out Justice Burger's suggestion, that ought to be included, or is it already broad enough to do that type of thing?

Mr. CONKLIN. As I have read and interpreted the proposed legislation, it does allow for a number of alternative solutions when it comes to the program and the design of facilities, which it is trying to support. I would suggest that the bill should not get so particular in detail that it in itself starts to define the solution, but should promote a continued study and approach to the solution, which it now does. We believe that the probable demands, costs, and benefits of this concept will require much study and is a separate issue from the principal objectives of S. 186.

I think the proposed distribution of funds and the qualification for funds is very fairly treated within the bill.

Senator BUMPERS. If I may pursue that just a moment to ask Mr. Braunschneider a question.

Are there any colleges or universities in this country that offer degrees in penology?

Mr. BRAUNSCHNEIDER. I am not familiar with any schools that offer degrees exclusively in penology. Many schools have degrees in criminal justice, where you can major and specialize in penology.

Senator HEFLIN. Mr. Darwick, as we know, one of the LEAA programs, one of the great successes that it had was the police training, which I referred to as the professionalization of the police force. Part of the program was a minisort of carrot. If you established minimum standards within your State, such as the requirement of 240 hours of training during the first 9 months, then you were eligible for participation in the LEAA program, as I recall, Mr. Velde may straighten me out on this.

Do you see a similar situation in regard to the training of prison personnel as to requiring some sort of a minimum amount of education in regard to their work; whether the idea of some behavioral science instruction, and other matters which are necessary in the corrections field would be of benefit, and whether something of that nature could be included as a condition for Federal participation in the funding of prisons?

I have not thought this through. The thought has just come to me. But do you see any analogy between the police education and

the correctional education, and the idea of some type of minimum standards that might have to be met?

Mr. DARWICK. The LEAA programs were very effective as they related to the police. The law enforcement education programs put many police officers through college. Other training programs that were developed by LEAA were very effective.

I know that the correctional people are doing a lot of work in this area. Certainly, anything that was done for the police would be as effective for the correctional personnel.

Senator HEFLIN. I believe Mr. Velde could answer this question.

Has there been any program of a similar type as requiring so many hours of training for correctional institutions?

Mr. VELDE. Mr. Chairman, the National Institute of Corrections has a model training facility in Boulder, Colo. There are a number of short courses which NIC does sponsor. From time to time, their programs are made available as a road show to various State systems. Occasionally, you will find equivalents of minimum training requirements in a correctional context find their way into some State law. It is very common in the police setting to find minimum hour training requirements as a matter of State law, but basically in the corrections area it is an exception to the rule.

In the LEAA program, Mr. Chairman, I think about roughly 400,000 students successfully got some kind of a college degree program in the 12 years of its existence, about two-thirds of those were police, and one-third corrections.

COMMUNITY RESISTANCE

Senator HEFLIN. The halfway houses approach runs into the possible danger of community reaction if one of the inmates commits a crime. The old road camps where the prisoners worked on highways had its ill and its good points, but in my State the fact of inmates escaping and committing crimes raised such a community howl of "We don't want them."

Now, it is not only the halfway houses that are a danger and a problem, but also the location of prisons. In Alabama we are trying to build some prisons, and we go to the location and that sort of thing, and we are finding that most communities don't want them.

In the halfway house, what has been your experience in regard to community outcry against them in the event of a crime being committed by an inmate? What has been done to try to alleviate that problem?

Mr. BRAUNSCHEIDER. Senator, we have found that, as you say, the potential for running into a lot of community resistance when you attempt to establish a halfway house in the area is very real. As you said, you can get neighborhood groups that literally go right up in arms.

We have found, in the training programs that our association has provided, what we tell the participants and what we have found to be workable as well, is an increased attempt at educating the community as to the type of individual who is going to be there, the extent of supervision that that person will come under, as well as a number of other things.

We have found that by taking the time and going to the effort of presenting the community with the facts and the figures, a lot of the resistance can be overcome. That is not to say that everybody says, "All right, wonderful, we will have a halfway house."

On the other hand, it helps if you can educate the public to the fact that these are not murderers that are coming back into the community, but these are people who statistically have been shown to have low risk potential, and who do not present a clear and present danger to the community that they are coming into.

The other thing that we have found, too, in talking with community groups is that when you say to them, unless the man is under a life sentence, he is going to come out of prison one way or another, and some day or another. The choices are he can either come out, I believe as Senator Bumpers said, with \$10 in his pocket, and they open up the gates and he walks out; or he can come in a gradual reintegration into the community, where he can have life skills training, and where he can have job skills training, hopefully job counseling and job placement.

People, once they grasp that this is the choice that they are faced with, will typically, once again, not be as resistant to the establishment of a halfway house in their community.

This is kind of a generalization, people still don't like the idea. The same as they don't like a prison in their area, in their neighborhood, they don't want a halfway house there either. But there are steps that you can take to overcome that.

Senator HEFLIN. The trend, as I have observed it, and it is supported by statements today by leaders in the administration, is that Federal assistance in many, many programs should be the responsibility of State and local units of government. We can anticipate that over a period of years there will be more and more of a transfer.

If you are going to have a program, then you are going to have to finance it. Some of this is supported by the fact that nearly 50 percent of the States have surpluses. Some States are very fortunate to have oil and gas money, large increases in population, and because of court decisions on reevaluation of property, the property taxes bring a surplus. Other States, on the other hand, are poor and do not have the money.

I suppose, what I am leading up to is that a State level, as I foresee 2 years, 4 years, possibly 6, 8 years down the road, the competition in the poorer States—I mean poorer by meaning that they don't have surpluses in revenue—for Government funds, State funds is going to become increased. As we know, prisons, correctional institutions have been pretty well at the bottom of the list for people involved.

In order to go with a Federal program, do you foresee that there can be methods by which institutions can produce revenues to pay a proportion? This is sort of a broad question, and we had for awhile many States making license tags, but now they have pretty well stopped. We had prisons in the past being jute mills, and producing revenue. Today there are, of course, the farms and the farmlands that prisons produce.

Is there an area that we largely have undeveloped which can, by the work effort of the people in the institution, produce revenues to

pay for this? Now you get into the area of competition with private enterprise, and there is a real problem involved in that from a philosophical viewpoint, too. But are there areas where people in prisons can produce revenues with the idea of having some sort of a share basis for the States to produce revenues to help in the maintenance and the operation of prisons?

Mr. BRAUNSCHNEIDER. Are you asking me, Senator?

I really have not given much thought to that, other than you just asking it right now.

An example, which I don't even know how applicable it is to the United States, the country of Denmark has taken some very, very progressive steps in the past 10 to 15 years, I would say, in their prisons.

They ran an experimental prison, which I am familiar with and I believe it is still in existence, in the town of Ringe, Denmark, which is a maximum security facility. However, the inmates inside do not live the type of existence we have in maximum security institutions here in the United States.

For example, each inmate in that prison must be involved in an industrial skills training program, not stamping out license plates, but typically such things as making furniture. They are paid a wage that is commensurate with wages on the outside.

What becomes innovative about that is that they are required to budget the money that they earn. They are required, for example, to purchase their own food in the prison. They are also required to prepare their own food. Within the prison walls themselves, and this will sound a little bit startling, they have such facilities as a grocery store, and a bank.

The object and the purpose of it is, when these people are incarcerated—they are not allowed out in the community, this is a maximum security facility—they learn the life skills that they obviously missed out in the outside world. They are being trained.

To answer your question, the operating costs for running that facility are much less than facilities that don't have that type of a program. I cannot go to the extent and say that it is self-sufficient, or it doesn't cost, or that it actually produces revenues, but the cost factor is greatly reduced.

As far as making that applicable to the United States, I really don't know how you could make a prison an income producing facility, perhaps that is not the best way of saying it, but somehow showing a profit. I don't think that it is possible. One problem is that you have such a high number of staff per inmate. Each position in a prison, for example, has to be manned by about five people, and a lot of them are simply security people. It is a very expensive operation.

Senator HEFLIN. Do the rest of you have any thoughts on that?

Mr. CONKLIN. I do not have a comment.

Mr. VELDE. Mr. Chairman, there is a provision in S. 186 which, I guess, does foster the concept of prison industries. There is a formula in there, so that if a particular inmate is involved in a prison industry, or indeed even involved in construction of a facility authorized under this, that funds could be then set aside according to a certain formula to pay the equivalent of room and board, and

other support. So there is some contemplation, certainly not to the extent that you are talking about.

Also, Mr. Chairman, if I could, I would like to follow up on a question with Mr. Conklin, which Senator Dole raised earlier.

Currently there is no provision in S. 186 to authorize Federal funds to be expended for equipment when a new facility would be constructed. Particularly in the context of the Chief Justice in his remarks, where there seemed to be an emphasis on establishment of what might be called, correctional educational programs, which would also apply in the police context as far as training also, would it be appropriate to modify the bill to authorize one of the purposes for which these funds could be used for the equipping of the facility as well as the bricks and mortar costs?

Would it also be appropriate, perhaps, to not spell out a shopping list of do's and don'ts and things like that, but authorize and perhaps indicate a priority for educational and correctional context industries programs as well?

Mr. CONKLIN. I believe so. I did not read into the bill, as it is now written, that it was to be excluded.

Mr. VELDE. It is just silent. It does not say one way or the other.

Mr. CONKLIN. Right. It does not preclude that. It may be helpful that it would indicate that, as it may help to encourage and promote the educational aspects of the prison programs.

Mr. VELDE. From an architectural point of view, isn't it customary to include the original equipment of a facility as part of the planning and design efforts?

Mr. CONKLIN. Yes, it is.

Mr. VELDE. So it would be unusual to exclude it, wouldn't it?

Mr. CONKLIN. Yes. But may I add a closing statement: A statement has been made before this committee suggesting that if we stop constructing correctional and detention facilities, we will reduce prison populations. The same logic would imply that if we stop constructing hospitals there will be fewer patients! The continuing rise in the national crime rate will necessarily produce more sentenced prisoners, a portion of whom will require incarceration. We need to remodel and replace this Nation's worst justice facilities in order to securely and safely hold criminals who cannot, or will not, accept societal responsibility.

Mr. VELDE. That is all I have. Thank you, Mr. Chairman.

Senator HEFLIN. If you have no further questions, then we can adjourn.

Mr. VELDE. Mr. Chairman, there is a subsequent hearing of the subcommittee set for July 17. With your permission, Senator Dole would like to have this record remain open for 2 weeks for additional statements, any revisions, or further comments.

Senator HEFLIN. It is so ordered.

[Prepared statements of Messrs. Darwick, Braunschneider, and Conklin follow:]

PREPARED STATEMENT OF NORMAN DARWICK

SUMMARY

Mr. Darwick will testify from the perspective of providing facility design expertise to the more than 13,000 police executive members of his organization, the International Association of Chiefs of Police (IACP). He will speak of the overcrowded and obsolete conditions presently existing in most criminal justice facilities emphasizing that police buildings alone date back from 50 to 75 years, in most cases. Conditions in some correctional institutions constitute unsafe and inhumane treatment.

Mr. Darwick will also testify that earlier federal focus on this problem fell far short of needs. He will conclude with observations of tomorrow's requirements.

* * *

Norman Darwick is only the third person in the 88-year history of IACP to serve as its Executive Director. His formal education in Police Science and Criminology was received at American University, Northwestern University, and Miami-Dade Junior College. Mr. Darwick started his police career with the Metropolitan Dade County Public Safety Department in 1955 and rose through the ranks to the command level. In 1966, he joined Northwestern University Traffic Institute as a management and training consultant, and entered into service with IACP in 1966. After fifteen years of service to the IACP, he was confirmed by the Executive Committee as Executive Director in 1980.

* * *

Mr. Chairman and members of the Subcommittee, I deeply appreciate your invitation to testify on S.186 regarding a federal program of assistance to state and local criminal justice agencies for planning and construction of police headquarters, courts, and other criminal justice facilities.

The International Association of Chiefs of Police maintains among its members the executive head of agencies providing full police services to

approximately 98 percent of the U.S. population at federal, state, and local levels. We also maintain members in 59 other nations throughout the world.

The IACP has been active in providing direct criminal justice facility design assistance to local agencies since the early 1960s. For example, our current staff played a major role in providing professional assistance for the design and construction of criminal justice facilities in (1) St. Croix, U.S. Virgin Islands; (2) East Chicago, Indiana; (3) Lancaster City and Lancaster County, South Carolina; (4) the City of Boise and Ada County, Idaho; (5) the Public Safety and Criminal Justice Systems of the Navajo Nation and Eagle Pass, Texas, and several regional public safety facilities.

We continue to offer several levels of architectural assistance depending on local desire and financial capabilities. Our preferred and most effective methodology in providing staff assistance in the construction of criminal justice facilities is through a process of first conducting a comprehensive Administrative and Operational Study of the Agency(s). Upon completion of this study, we then work with our Associate Consulting Architectural firm and together design a building that meets the specific recommendations for operational improvement contained in the report. This appears to be the critical relationship that is absent from most other facility designs. In the absence of this methodology, local jurisdictions generally employ a local architect with little or no expertise in criminal justice facilities. He then perpetuates existing police management and operational deficiencies by designing them into the new facility.

The amount of criminal justice activity within the states is continuing to increase. For example, in 1978 Index crime increased two percent; in 1979 nine percent; and 1981 shows increases reaching into double digits.

Criminal justice physical plants generally tend to be obsolete and overcrowded. We find that many police facilities were designed 50 and even 75 years ago. Their designs were often intended for a purpose other than housing a modern police agency. If they were in fact intended to house a law enforcement agency, the agency has long surpassed the personnel numbers for which the

facility was programmed to accommodate. Secondly, contemporary law enforcement management and technology has changed significantly in those ensuing years.

State and local financial resources are being strained by citizen's demands for service. Many communities have in fact been forced to cut back on law enforcement services and personnel. Local funds for construction are becoming rare.

In the case of correctional facilities, the situation is critical. Inmates are indeed being housed in facilities that are inhumane, unsafe, and not at all conducive to rehabilitation. Courts are placing more and more convicted persons on probation, not because they do not cause a threat to society or are not in need of professional counseling, but because of the revolving prison door. When one goes in the front door one or more must exit the rear because of overcrowding.

Police training in the past several years has advanced far beyond the point where local police facilities can meet the demands of seating, acoustics, privacy, or equipment requirements.

Several forms of federal financial assistance for criminal justice facility construction have been made available over the past 20 years. In the 1960s, the Model Cities Program provided some assistance to a few cities. Also in the 60s and 70s, Civil Defense monies were available to agencies willing to incorporate civil defense disaster planning in their overall design.

All of the programs mentioned above were carried out under various "National plans." For example, facilities constructed with civil defense money were required to meet certain "Emergency Operating Center" requirements. These requirements were limited to the Communications Center, storage, and emergency administrative offices. No restrictions were placed on other management and operational aspects of the design. Relatively few requirements were demanded from the Economic Development Agency. The Model Cities programs were limited to cities with overall criminal justice planning.

Two major federal funded facility planning programs were initiated in 1976 (1) Seismic Design for Police and Fire Stations funded by the National Science Foundation and (2) the National Clearinghouse for Criminal Justice Planning and Architecture funded by the Law Enforcement Assistance Administration. Neither of these projects provided for on-site technical assistance, they merely provided for broad based recommendations. Our major objection to the clearinghouse was the obvious lack of input from criminal justice architects. Future planning should consider the expertise of those who have gained national and/or international reputations in this field.

It has been our experience that police officers and police agencies project an image closely aligned to the facility from which they work. Public confidence in the police is likewise affected by the physical appearance of the facility from which the police, court and correctional components of the criminal justice system operate.

You may want to consider the level of crime in addition to population as a criteria for allocating funds. Police agency size is affected by crime, and crime is affected by such factors as population density, age, and stability; economic and cultural conditions and climate. Therefore, raw population is not necessarily an indicator of community criminal justice needs.

There should be some requirements that competent criminal justice expertise be coupled with professional architectural firms to assure a facility design that will include both modern design technology and contemporary criminal justice management and operation theory.

To conclude, we agree in concept with the Bill's proposal to financially undertake comprehensive criminal justice construction programs. The facilities are needed and the proposal warrants diligent consideration.

Thank you for the opportunity to respond to this very important legislative proposal. Please do not hesitate to call upon us for additional assistance. I will be pleased to answer any questions.

PREPARED STATEMENT OF DAVID E. BRAUNSCHNEIDER, EXECUTIVE
DIRECTOR, INTERNATIONAL HALFWAY HOUSE ASSOCIATION

The International Halfway House Association (IHHA) is a private, not-for-profit membership organization of 2500 professionals in the field of community-based residential treatment, which was started in 1964. IHHA is grateful for the opportunity to comment on S.186, the Criminal Justice Construction Reform Act, introduced by Senator Robert Dole on January 21, 1981.

While recognizing that the provisions of S.186 apply to a broader definition of "criminal justice facilities", IHHA's comments today will be limited to the more narrowly defined area of "correctional facilities".

It is our understanding that S.186 proposes to provide supplemental funds to states for the purpose of constructing new and improving existing correctional facilities. There is a widely recognized need for such assistance and few could deny that the present condition of most existing correctional facilities in America is deplorable and in a rapidly deteriorating state. Prison overcrowding, and the accompanying problems overcrowding creates, has reached critical proportions in many areas of the country. One need hardly be reminded that overcrowded conditions were significant contributing factors to the Attica and Santa Fe riots, and the more recent disturbances in Michigan prisons. Michigan's governor, in fact, had hardly completed invoking emergency powers to relieve overcrowding in state prisons before trouble broke out. These were not isolated instances, either. Prison disturbances are becoming commonplace and seem to occur with increasing regularity. Many states are currently under court order to reduce their prison population.

In acknowledgement of this situation, IHHA supports the spirit of S.186 and commends the Senate for its demonstrated concern and desire to take a leadership role in alleviating these debilitating conditions. At the same time, IHHA regrets that the provisions of S.186 do not emphasize what we regard to be a viable, cost-effective alternative to the construction

of more prisons; that is, the increased and expanded usage of community-based correctional facilities.

It is true that "community-based correctional facilities" and "halfway houses" are specifically mentioned in the definition of "correctional facilities" found in Section 102 of the Bill. However, there is no wording in the Bill which specifically emphasizes their increased and expanded use in helping to solve the problems presently being experienced in our nation's prisons. It is the position of IHHA that states will not be motivated to take advantage of the services provided by community-based programs unless there is a clear-cut mandate to do so in the provisions of this Bill.

It is further the position of IHHA that without an accompanying mandate to de-institutionalize qualified inmates, in conjunction with an expanded program of prison construction, the desired results of this Bill will not be realized.

To substantiate these positions, I will submit two examples. The State of Indiana recently commissioned a study to evaluate the economic impact of a community corrections subsidy plan. The results of that study showed that a full 25% of the present state prison population could qualify, under fairly strict guidelines, for release to some type of community-based program, at a savings to the taxpayers of 9.5 million dollars.² While facts such as these are known, there has been no obvious move by other states to commission similar studies to determine the feasibility of de-institutionalization in their jurisdictions. Yet, virtually every state is complaining of overcrowding and inadequate facilities.

The second example is in the State of Missouri. Eighteen private community-based agencies have pledged 276 beds to the Department of Corrections for every day of the year, at an average turnover rate of 4

²Umbriet, Mark S. Reducing Prison Overcrowding Through Community Correction: The Economic Impact of Implementing the Indiana Community Corrections Plan FACT (January, 1981)

per bed per year (a potential total of 1104 inmates). The Missouri Department of Corrections is decrying the overcrowding in its prisons, yet has not taken up that standing offer. In fact, one large private agency in St. Louis recently had to close one of its facilities because there were not enough clients to warrant keeping it open.

While these are isolated examples, they are not atypical of the prevailing attitude among the states today. States are not taking full advantage of alternatives which presently exist and could already go a long way toward alleviating the overcrowded conditions being experienced. There is no reason to suspect that they will either, should federal assistance become available to them to construct additional prisons.

Prison construction alone is not the answer, for it is highly doubtful that construction could keep pace with the rate of increase in the prison population.

The United States already has one of the highest incarceration rates per 100,000 population of any major western nation. In 1979, our national prison population reached an all-time high of 307,384. Dr. Harry Allen, Chairman of the Administration of Justice Department at San Jose State University, a recognized authority on corrections, has predicted that, based on a straight line projection of current trends, the national prison population could reach 1.2 million by 2000 A.D.³

If Dr. Allen's predictions are anywhere near accurate, their implications, in terms of construction and maintenance costs, are staggering and barely comprehensible. Average costs of prison cell construction exceed \$30,000 today and, Dr. Allen predicts, could climb to \$111,000 in the future.⁴

³ Allen, Harry E., et al., Corrections In America, 2000 A.D. Paper presented for Western Society of Criminology (1981)

⁴ Ibid

In light of the potential that S.186, if enacted in its present format, could possibly fail to achieve its stated objectives, when faced with the monumental aspects of the future of corrections in America, IHHA would respectfully suggest some modifications of the present Bill.

First, IHHA would strongly recommend that wording be inserted to require that a certain minimum percentage of the total amount allotted for "correctional facility" construction be specifically designated for "community-based correctional facilities". This provision would ensure that each state applying for funds would be required to have community-based corrections play a large role in its comprehensive plan, and would also require them to adopt inmate classification systems to identify those offenders who could be placed in community-based programs with minimal risk potential.

Secondly, IHHA would recommend that each state satisfactorily demonstrate that it is already making maximum use of existing community-based residential treatment programs before qualifying for funds to construct new prisons. This provision would ensure that other states follow Indiana's lead in examining how to best alleviate overcrowding with available resources, at considerable tax savings, before selecting the more expensive option of new construction.

Thirdly, IHHA would recommend that states, when developing comprehensive plans for correctional facilities, be required to receive input from private agencies which provide community-based corrections services on a contractual basis. Private agencies play a significant role in community-based corrections in many areas of the country, and studies which have been conducted show they are an effective, cost-beneficial approach to rehabilitation for many type of offenders. Studies on recidivism rates and successful program completion have demonstrated that private agencies have statistically significant success ratios, as well as consistently lower cost factors when compared with similar facilities that are publicly operated.⁵

⁵ Carter, Robert, et al., Program Models: Community Correctional Centers, National Institute of Justice (1980)

Finally, IHHA would further recommend that the present wording of S.186, which excludes private agencies from applying for or receiving construction/rennovation money appropriated under this legislation, be changed to permit their inclusion in the funding allocation. As previously stated, private agencies already play a significant role in providing community-based correctional services, and that role could be substantially increased in the future. Just as states will need the funds to respond to increased correctional demands, so will the private agencies if they are to keep pace as well. Private agencies typically have very few resources for capital improvement, as the funds they receive go directly into programs and services. For private agencies to respond to increased service demands they, too, will need supplemental funds to acquire and rennovate adequate facilities. To exclude them from this legislation ignores their vital contribution and negates their ability to prepare for future needs.

To restate its position, IHHA believes that the present crisis in corrections cannot be alleviated by merely constructing new prisons. New and improved correctional facilities are urgently needed, but that is only part of the solution. The rest of the answer lies with a universally enlightened and progressive approach to utilizing viable alternatives to the traditional solution of prison incarceration.

SUMMARY

While expressing support for the spirit of S.186, the International Halfway House Association (IHHA) does have some concerns regarding specific provisions of the Bill as they apply to "correctional facilities".

If the intent of S.186 is to remedy the current deplorable condition of prison overcrowding and accompanying problems by providing supplemental funding for new construction and rennovation, then there must be a concomitant commitment to de-institutionalization. In the Bill's present format, it is doubtful that new construction or rennovation projects could even keep pace with currently projected rates of increase in prison population.

If, on the other hand, new construction programs are coordinated with systematized de-institutionalization of low risk offenders, then the goal of the legislation has a much better chance of being realized.

To ensure this, it is suggested that the Bill be re-worded to:

1) require the states to include specific requests for funds for community-based correctional facilities; 2) require the states to demonstrate they are making maximum usage of available community-based facilities, both public and private, before constructing new prisons.

In addition, because private agencies play such a major role in community-based corrections, that the states be required to include input from private agencies in the development of their comprehensive plans. Finally, in recognition of the major role played by them in community-based corrections, private agencies should not be excluded from applying for construction/rennovation funds under this legislation, as they will have capital improvement needs as well as the states.

PREPARED STATEMENT OF RICHARD G. CONKLIN, THE AMERICAN
INSTITUTE OF ARCHITECTS, CHAIRMAN, COMMITTEE ON
ARCHITECTURE FOR JUSTICE

Mr. Chairman, my name is Richard G. Conklin, AIA. I am vice-president of the international architectural and engineering firm of Daniel, Mann, Johnson and Mendenhall, with headquarters in Los Angeles. My firm has examined and undertaken the design of many correctional and justice related facilities throughout our nation. I present these remarks concerning S. 186 before your Senate Subcommittee on behalf of The American Institute of Architects, the national association representing the architectural profession.

The AIA has been active in the areas of justice facility planning and design for the U.S. justice system for many years. The Institute's Committee on Architecture for Justice was established in 1972 by an AIA Board of Directors resolution in response to the severe conditions in the American prison system. I am currently Chairman of that Committee. The Committee's concerns now extend to the entire justice network including law enforcement and court procedure. Our professional program has included extensive and continuous liaison with other concerned organizations, an annual touring exhibition of new design work for the justice system and a publication entitled "The Design Resource File for Planning Justice Facilities."

A 1972 White Paper issued by our committee advised AIA members that serious changes were taking place in the criminal justice system "which architects should recognize when planning new justice facilities." The report carried a "red alert" to the profession stating that "... major changes now being precipitated within the criminal justice system will render obsolete many facilities now being planned." The long term thrust of the White Paper involved:

- state component committees on justice facilities planning for liaison with local architects;

- a continuing education program for the profession, including national and regional workshops;
- federal funding of national student competitions for the design of justice facilities, and
- liaison with related professional and governmental groups dealing with the justice system.

Our Committee on Architecture for Justice is not only concerned with building new, acceptable facilities for those who require incarceration, it must be noted, but also we are involved in the study of diversionary programs and alternate methods of treating offenders. However, we will not deny the obvious crucial need to revise or replace those inhumane housing conditions, for incarcerated human beings, that exist all around us.

With the unanimous endorsement of the members of the Architecture for Justice Committee, the Institute generally supports the provisions of S. 186, the Criminal Justice Construction Reform Act as introduced by Senator Dole. We applaud the objectives and timeliness of the Senator's proposal and fully understand the urgent legislative need which the bill addresses. The growth in federal, state, county and city inmate populations since the mid-1970's has far outdistanced facility capacity and construction and has resulted in overcrowded conditions too often characterized by a lack of security, prisoner safety and control. It's not uncommon to find correctional and detention facilities housing two to four times their design capacity, in any part of our nation.

The majority of justice facilities in use today across the nation were constructed in the late nineteenth and early twentieth centuries. These relics are generally inflexible, and unsuitable to accomodate contemporary penal philosophy and functions. Too often the excuse is used that they cannot be vacated to allow for remodeling because interim housing provisions cannot be obtained. Frequently there is no excess capacity to be found anywhere to hold the overflow of prisoners even if local detention facilities are used.

Today's law abiding citizens demand faster, tougher penalties for criminal acts, yet they are reluctant to fund proper housing requirements for the offenders. This attitude unfortunately coincides with the demise of previous federal matching funds that encouraged the development of adequate justice facilities. To add to this problem many court systems have mandated placing prisons under receivership or even releasing prisoners earlier than sentences require. The justice facilities crisis is clearly long overdue in receiving appropriate policy attention.

Architects who have done design work for the nation's prisons, jails and other justice facilities are acutely aware of severe conditions in our existing inventory of facilities -- conditions which are no longer considered humanely adequate and are in desperate need for immediate improvement. The Dole legislation, S. 186 recognizes these conditions and the need for reform -- today. Delay can no longer be acceptable.

I realize that any architect who supports Senator Dole's important proposal may be suspected of a subjective, self-serving interest. The truth is, however that architects' knowledgeable of the conditions that exist in many detention facilities across the nation, are also vitally concerned with the lack of prisoner and citizen safety, security and controls. These problems are perpetrated by inadequate and overcrowded facilities. Studies have shown that most recent prison riots are a result of these poor conditions and point to a need for incorporating better security systems into any modification plan for these facilities; and, of course, it is well known that many, many facilities nationwide, are housing more inmates than they were designed to accomodate. A recent study conducted for the National Institute of Justice indicated that as of 1978, 300,000 people were incarcerated in federal and state prisons, a 50% increase over 1972. In the same period, state prisons increased their rated capacity by only 23,000 units, barely one-fourth

of the 98,000 person increase in prison population. A national rate of incarceration at all levels of government increased from 164 to 207 persons per 100,000 population, an increase of 26 percent.

I have personally inspected more than 50 prisons, county jails, and city jails within the past five years, and consequently speak from firsthand observation of inhumane, unsanitary, and unsafe conditions occurring in many of them as a result of overcrowding. Accordingly, I fully appreciate the various courts' actions in condemning a number of the most unsuitable facilities among them, but believe there are many more deserving similar scrutiny and condemnation. Only this month the N.Y. Times documented the problem in Alabama where the state's prison system has been under Federal court receivership due to appalling conditions and overcrowding. Over 1,400 of Alabama's 6,000 inmates have been forced onto local jail facilities to meet court orders and prevent forced early release. In Michigan, over 1,000 state prisoners face a three month early release due to overcrowding in state prisons. Last month the Iowa legislature debated alternative proposals to alleviate its overcrowded prison system where closets have been used as cells. As of early 1980, 19 states were under court order to remedy conditions that included crowding in one or more facilities, and at least 12 additional states were facing similar court challenges. Equally serious statistics on the facilities crisis can be found in the important National Institute of Justice report on the U.S. Correctional Facilities System.

Not all the problems and needs are in correctional facilities -- many of our court facilities are also overtaxed and inefficient. We are therefore pleased that the bill is comprehensive and not limited to funding of detention facilities alone. For example, there is a great need for conservation and modernization of the landmark county and law enforcement facilities across our country, which should not be ignored. Many of these buildings have become

important community symbols and should be saved -- but as facilities, not museums. Equally important is the vast amount of energy and other material resources conserved through rehabilitation of existing facilities.

An important feature of the bill which we support is the requirement that the states produce comprehensive plans for the development of their facilities over a seven year period. The AIA's established policy has been to encourage and support a comprehensive planning process for the construction and modernization of justice system facilities, both long-range and short-range. This process should promote continuity, public involvement, interagency and intergovernmental cooperation, improved quality in service delivery systems, and cost-effectiveness.

Another outstanding provision of this legislation, which the Institute considers invaluable in the effort to efficiently and effectively improve correctional facilities, is the demonstration grants program. This bill provides that the administrator of the criminal justice facilities "shall have the authority to make demonstration grants designed to test the applicability of advanced practices involving the design, construction and modernization of criminal justice facilities." Only by seeking continued improvements in all aspects of the construction of criminal justice facilities can continually changing system demands be safely and adequately satisfied.

We also feel that the final version of the legislation should address the following issues and concerns. First, the AIA is hesitant to recommend the establishment of yet another federal agency to impose more standards and regulations as a condition for construction funds being made available to city, county, or state agencies. We are also concerned that states' rights might be usurped and that local planning preferences might be ignored by regulations established by the federal government as a condition for receiving financial assis-

tance. Yet we understand that some kind of qualification criteria will be necessary to obtain design and construction funds and ensure a fair and equal consideration of communities that require justice facilities. Third, while it appears to us that wide support of the "halfway houses" or "community bed" facilities could receive a high legislative priority among the discretionary funds, these facility types embody a correctional philosophy many citizens consider contrary to the public good. A fourth issue that the final bill should address in addition to promoting a nationwide building program is a method of achieving uniform building design standards for justice system facilities. The Institute, again as a matter of policy, encourages governmental recognition of uniform building standards for these facilities. The AIA, although it does not develop standards itself, represents architects who are principal users and implementors of standards and has considerable influence upon the standards proposed by other organizations, including the American Correctional Association and the U.S. Department of Justice. As a profession, we promote the continued development of a consensus of standards that would reflect informed state-of-the-art thinking of what jails, prisons, and courthouses should be like and how they should work. It is also important to mention that the AIA has endorsed the ACA accreditation process to insure improved correctional facilities.

Regarding the funding sources for implementing S. 186, the AIA agrees with Senator Dole's expressed recognition when introducing the bill that current budgetary concerns might mitigate realizing the legislation's comprehensive financial targets. We believe that the need for the level of financial commitment proposed is both justified and well documented. Senator Dole's criminal justice development bond mechanism is an ambitious financial plan worthy of trial, examination and implementation until Congress is willing to appropriate the amounts suggested in S. 186 for the seven year period.

In conclusion, the AIA appreciates the fine work of Senator Dole and his staff in bringing valuable attention to such a neglected policy area that has been neglected at all levels of government. The Institute offers this Subcommittee and the entire Congress its support in identifying and providing the necessary improvements in our Criminal Justice System. We share Senator Dole's hope that Congress will now face those hard policy and budget choices that will reorder national priorities. We believe that S. 186 is an important step in the right direction.

10 June 1981

ADDITIONAL ANSWERS TO QUESTIONS ASKED AT S. 186 HEARING

1. Senator Bumpers referred to a recently constructed maximum security facility that is already "a shambles". Architects experienced in prison design continually study and select building materials that can withstand the harsh treatment often imposed by inmates. We have found, however, that proper administration and maintenance of security facilities can usually prevent the majority of potential damage that would otherwise occur.

2. A statement has been made before this committee suggesting that if we stop constructing correctional and detention facilities, we will reduce prison populations. The same logic would imply that if we stop constructing hospitals there will be fewer patients! The continuing rise in the national crime rate will necessarily produce more sentenced prisoners, a portion of whom will require incarceration. We need to remodel and replace this nation's worst justice facilities in order to securely and safely hold criminals who cannot, or will not, accept societal responsibility.

3. Senator Heflin asked if Justice Berger's concept of mandatory education and skill training for prisoners should be incorporated into S. 186. As currently drafted, S. 186 does not preclude or exclude such programs. We believe that the probable demands, costs, and benefits of this concept will require much study and is a separate issue from the principal objectives of S. 186.
4. Senator Dole asked if the AIA proposes the development of standard building plans that would be duplicated repeatedly. Our chief interest lies in the establishment and application of performance, space, and safety standards that would serve as guidelines for the design of justice facilities of all types. These should be articulated so that they promote the development of innovative, but responsible, design solutions that would, in the hands of experienced architects, produce improved facilities that satisfy specific needs; we would not support the development of "universal" or stock plans for such highly specialized buildings.

Senator HEFLIN. We will adjourn at this time.
[Whereupon, at 12:10 p.m., the subcommittee adjourned, to reconvene at the call of the Chair.]

THE CRIMINAL JUSTICE CONSTRUCTION REFORM ACT

THURSDAY, NOVEMBER 19, 1981

U.S. SENATE,
SUBCOMMITTEE ON CRIMINAL LAW,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:15 a.m., in room 2228, Dirksen Senate Office Building, Senator Charles McC. Mathias, Jr. (chairman of the subcommittee) presiding.

Also present: Senator Dole.

Staff present: Ralph Oman, staff director, Grace Rienhoff, chief clerk, and Charlie Borden, Linda Colancecco, Maura Whelan, professional staff members, Criminal Law Subcommittee; Pete Chumbris, counsel to Senator Thurmond; Richard Velde, Kevin Manson, counsels to Senator Dole; Kevin Mills, counsel to Senator Specter; Lynda Nersesian, counsel to Senator Grassley; John Nash, counsel to Senator Laxalt; Scott Green, counsel to Senator Biden; Bill Short, counsel to Senator Denton; and Arthur Briskman, counsel to Senator Heflin.

OPENING STATEMENT OF SENATOR CHARLES McC. MATHIAS, JR.

Senator MATHIAS. The committee will come to order.

We are continuing the consideration of Senate bill 186, the criminal justice construction reform bill, under which the Federal Government will assist State and local governments in construction of new jails or in modernizing existing penal facilities. It also would provide some Federal assistance in the construction of court facilities.

The difficulty, of course, in this case, as in so many cases, is that the price tag is very high. It could be more than \$6 billion over the next 7 years. But we face a crisis situation under the pressure of overcrowded prisons and stagnant, crowded criminal dockets. The system of justice in many parts of the country is on the verge of collapse.

The subcommittee has already held 2 days of hearings on Senate bill 186. You have heard about the deplorable jail conditions across the country. The current inmate population of State and Federal prisons is about 330,000, an increase of 60,000 in the past 3 years alone.

Nearly all of the States are struggling with overcrowded and substandard prisons. Thirty-nine States face court action on their prison conditions. In my own State of Maryland—and I am glad to

see here this morning my friend Steve Sachs, the attorney general of Maryland—we saw on October 2 the Maryland district court in Baltimore awarded the inmates of the Worcester County Jail on the Eastern Shore nearly \$2 million in damages because of unsanitary and overcrowded conditions.

Most of the States have started major construction and renovation projects, but the financial crunch has been particularly difficult in this area. To meet the minimum prison standard it will be necessary to spend more than \$10 billion on new construction.

The New York Times has described the average American prison as a "tinderbox," and I think we have had unfortunate confirmation of that judgment within recent days. Last month, 29 inmates and 6 prison employees were taken hostage by a band of prisoners in a State penitentiary in Pennsylvania. Fortunately, this incident ended after a few days without major bloodshed; but during the riot in the New Mexico State Penitentiary in February of last year 33 people died—and of course the memory of Attica is still very fresh.

The damage caused by these overcrowded prisons casts a shadow over the entire criminal justice process. It directly affects how judges sentence criminals, and it encourages the premature parole or release of people who are dangerous to society. Some say that without adequate prison capacity we will have a tough time trying to lower the rate of crime.

Senate bill 186 will at least give us a chance to look at all of these correctional problems and to examine alternatives to incarceration. We may be wasting limited prison space on nonviolent offenders who could be treated and rehabilitated in other ways. The subcommittee has received testimony from advocates of alternatives to incarceration, and we expect to hear testimony from some of them today.

In addition to the problem of providing sufficient space for prisoners, the subcommittee wants to study rehabilitation efforts. For this reason I have included two other bills recently referred to the subcommittee in the agenda this morning: Senate bill 1597, to establish a corporation for prison industries; and Senate bill 1690 to assure that prisoners have a marketable job skill and basic literacy before being released on parole.

Chief Justice Burger has stressed the need to train and educate inmates if we ever hope to stop the revolving door that keeps our prisons full. We will devote some attention today to this aspect of prison policy.

Also, I would like, at this time, to place in the record Senator Dole's prepared statement.

[The prepared statement of Senator Dole follows:]

PREPARED STATEMENT OF SENATOR ROBERT DOLE

Today the Criminal Law Subcommittee begins the third day of hearings on the Criminal Justice Construction Reform Act, S. 186. The committee will also take a first look at S. 1597, which is prison industries legislation I have introduced, and will cover S. 1690, introduced by Senator Specter dealing with providing prisoners with basic vocational skills. I would like to thank the chairman and his staff for their time and efforts devoted to the massive problems plaguing correctional officials throughout the country. The riots at the New Mexico State Penitentiary allow the public only a dim glimpse of the crises that correctional officials face.

Today nearly 8,000 prisoners have lawsuits hanging over the heads of governors, county commissioners, wardens, sheriffs, correctional directors and prison guards. Prisoner lawsuits have literally brought correctional, agencies, local governments and, in some cases, whole States to their knees financially.

Congress has taken a leadership role in protecting the civil rights of prisoners by passing the Civil Rights of Institutionalized Persons Act last year. Now it must take a role in helping protect the ability of correctional officials to carry out their duties to society without fear of violating prisoner rights by operating antiquated and overcrowded facilities. S. 186 can assist local officials in carrying out those responsibilities by providing the necessary resources they need to bring facilities up to the requirements of law. S. 1597 complements S. 186 by assuring that these prisoners who are willing to mend their ways can take a first step toward rehabilitation by obtaining and developing useful skills.

Those who favor imprisonment have been accused of having a vested interest in building more prisons. On the other hand those who do not favor imprisonment have been tempted to point to deplorable conditions in our prisons as a justification for not imprisoning. We should ask who has a vested interest in seeing that those sentenced to imprisonment serve that time under humane conditions. I suggest we all do.

I commend the chairman for moving to bring these hearings on. It's time that we move decisively to assist those officials whose duties mandate that they carry out sentences of imprisonment imposed by the courts. If prisons are to restrain, deter, punish or rehabilitate they must accomplish these ends within evolving standards of decency of a civilized society.

This morning I am pleased to introduce to the subcommittee two distinguished Kansas officials who are most familiar with the field of corrections, that less glamorous side of the criminal justice system: Attorney General Bob Stephan and Commissioner of Corrections Patrick McManus.

Senator MATHIAS. In view of the long witness list, I have asked most of the witnesses to confine the oral summary of testimony to 5 minutes. The full text of their prepared statements will be included in the record, which will be kept open for 3 weeks for additional submission by persons not able to appear today.

Our first witness is the distinguished and able Governor of the State of Illinois, the Honorable James R. Thompson.

Governor, we are glad to have you with us.

STATEMENT OF JAMES R. THOMPSON, GOVERNOR OF ILLINOIS

Governor THOMPSON. Senator, thank you very much for this opportunity to appear before the subcommittee in support of the bill.

The committee has my prepared testimony, and I would like simply to summarize the efforts that the State of Illinois has accomplished on its own to demonstrate that with all of the good faith and with all of the reallocation of priorities in the world in our State's budget, the States are unable fiscally to achieve that which must be achieved in order to guarantee the people of our Nation in the 50 States minimal protection from violent crime, which is their State and Federal constitutional right, I believe.

Let me begin by saying that the 50 Governors of the States are unified on the proposition that dangerously overcrowded State prison facilities are the Nation's No. 1 criminal justice problem. We have so found in a report from the Criminal Law Committee of the National Governors Association. We are united on that point. We know of no more pressing criminal law problem in our 50 States than our overcrowded penitentiaries.

Second, the Attorney General's Task Force on Violent Crime, which I was privileged to cochair with former Attorney General Griffin Bell, presented to the Attorney General, to the President,

and to this Congress now the testimony that I have given and the Attorney General has given, 64 recommendations for combating violent crime on the State/Federal level across the Nation.

The single most important recommendation of the 64, we believed, was the recommendation for a \$2 billion 4-year Federal grant program to help States build new, humane, progressive prison facilities.

Third, though all of the other 63 recommendations for combating violent crime on the State and Federal level were good and sound, we believe, many of them contained in a bill, I believe, passed by the Senate Committee on the Judiciary just yesterday, are certain to receive widespread support in Congress as well as in State legislatures. Most of those will be to no avail if having successfully been responsible for the apprehension and prosecution of violent criminal offenders we are left with no place to put them; that is, into safe and humane prison facilities.

That is why we regard and the Governors regard the recommendation for Federal help in constructing prisons as the No. 1 centerpiece of the report, not because we simply seek more Federal funds to supplement our State budgets but because none of the rest of it will work if we do not have a place to put the violent.

In Illinois when I became Governor in 1977 my predecessor said to me as I took office that the single most critical problem you will face as Governor during your term is the deplorable state of the State's prison system. I repressed the urge to ask him why it was deplorable after he had been the Governor for 4 years and set about adding prison bed space. We have, using our own capital, added 3,500 beds to the State's prison bed system at a capital cost of \$87 million, at an annual operating cost of millions of dollars.

Corrections has been a priority in Illinois budget since I have been Governor, just as law enforcement has been a priority since I have been Governor. And even in the face of diminishing Federal assistance for the States—for example, the loss of general revenue sharing—we have maintained this high priority for corrections and law enforcement. We are slowly losing the battle.

The other day a Federal district judge ruled that one of our maximum security penitentiaries at Pontiac, Ill., had to be converted to single celling, that a plan had to be submitted for single celling within 60 days. We are appealing that ruling because we think it wrong in light of the Supreme Court of the United States recent opinion involving an Ohio case.

We would eventually like to go to single celling as a desirable corrections goal, even while we continue to believe it is not a constitutional mandate. But the time and cost involved and the critical necessity to find bed space to hold the violent offenders in Illinois and increasing prison population as a result of tougher laws—determinant sentencing, three-time loser sentencing—all of these measures which the people of Illinois have demanded and which the Illinois General Assembly has responded to, have added to prison space again and again.

We have constructed new prisons, Greenfield Prison, from the ground up. We have modernized older prison facilities. We have converted underutilized mental health facilities to prisons at a cost much less than the construction of new prisons. We have done

everything we can to accommodate ourselves in terms of badly needed prison space.

And yet, Senator, as I sit here before you today having added 3,500 beds to our system in almost 5 years, we are not one single bed ahead, not one single bed ahead of when we started 5 years ago. We will need another 3,500 beds within the next 2 years, and frankly, I do not know where they will come from.

Let me say one other word, if I might. Sometimes the construction of new prisons is opposed by those who believe that we have not done everything we can to provide for alternative treatment of offenders who have been convicted, and sometimes that caution is to be taken, but it is not true in Illinois.

We have work camps all over the State of Illinois, including the Illinois State Fairground where 50 prisoners are housed in dormitories except for 2 weeks of the year when they are used by 4-H kids. They are housed in dormitories at the Illinois State Fair, and the Illinois State Fair has never been cleaner, brighter, and more hospitable to the people of Illinois.

They clean our State's highways, work that otherwise would not be done. They work in our State's forest camps and recreational facilities, work which otherwise in these tight budget times would not be done.

We believe in work camps. We believe in work release. We believe in halfway houses. We have an early release program. Nearly 3,000 penitentiary inmates have received shortened sentences as a result of early work release programs, one I entered into with some trepidation; but I think it is better to early release nonviolent offenders to provide bed space for violent offenders. Occasionally one of those "nonviolent" offenders becomes violent after release from the penitentiary with consequences for a Governor and his administration which you might imagine; but there is no other choice.

We are working diligently on a classification system to make sure that the right people are in the penitentiary and the right prisoners are in the right penitentiaries. There is much work to be done on prison classification in this Nation. The point is, I think, that most States have tried every other single alternative.

The extraordinary increase in the number of the truly violent offenders, those who if free on the streets of America kill, maim, rob, rape, has compelled us to provide additional space in the only secure space we know to protect the American people, and that is penitentiaries. And I think the people of the State are willing to pay the cost. They have been in Illinois. And I am willing to pay the cost. But it has come to the place where we must turn to the Federal Government for some kind of construction assistance.

The task force I sat on recommended \$2 billion over 4 years. Senator Dole's bill, Senate bill 186 which we are discussing this morning, which has been sponsored in the House by Representative Porter of my State, is a longer term measure with a higher cost and with added programs.

We certainly support Senate bill 186. We would like to see this Congress do something to help the States of this Nation which are on the front line in the battle against violent crime.

I repeat what I said at the beginning of my testimony: Unless something is done in this regard, all of the other recommendations of the task force and all of the other recommendations of experts in the criminal justice field from time immemorial on how to prevent crime and to prosecute it when it does happen and to protect our people will be to no avail.

Thank you very much.

Senator MATHIAS. Thank you, Governor.

You have referred to single celling. Now, some of the people who write me, some of the people who are in touch with me would think that was coddling criminals. They would like to see conditions just as tough in the jails as you can make them. They would like to see any kind of amenity knocked out of the prison system so that this would be a punitive experience in the most brutal sense. They would like to put them in a black hole, lock them up.

What is your reaction to that kind of advice?

Governor THOMPSON. Senator, in the anger of my resentment as a citizen toward violent crime, so would I. That is the first reaction of a normal, decent citizen.

Senator MATHIAS. But we must think of the long-term interest of society. What is the long-term interest of society?

Governor THOMPSON. As a Governor, the long-term interest of society, I believe demands humane correctional facilities which will serve two purposes: First, to protect the public by keeping these violent offenders off the street; second, to preserve minimum standards of decency for treatment of human beings, no matter how terrible they are. We do not want as a society to be more terrible than they, or we set no example at all by our criminal law. And within the demands of the due process clause of the Constitution, I do not happen to believe that single celling is a constitutional right, nor even a necessary correctional goal, especially in these times when we must weigh priorities.

I do believe, however, that simply to lock people up in inhumane facilities breeds a new form of violence within the prison walls and leads inescapably to the commission of new violent crimes in which the lives of fellow prisoners, and correctional officers, and innocent victims or hostages would certainly be threatened. And when these people return to society, as most will do some day, they return more violence prone probably than ever before.

I think there is a middle ground. We do not want to coddle anyone. We do not want to run correctional Hiltons. But on the other hand, the "lock 'em up" notion is usually espoused by those who have never seen a penitentiary and do not know how degrading and debilitating even the most well-run, humane facility is simply because you are not free.

Senator MATHIAS. Just those bars, just those cages.

Governor THOMPSON. Even on the ones without bars, the knowledge that you cannot go home when you want to is a heavy deterrent, I think.

Senator MATHIAS. Iron bars do not a prison make, nor stone walls a cage. I agree with you. I think brutal behavior breeds brutality inevitably.

You have also said you thought that people are willing to pay. Now, in this austere time just this morning we have been debating

how we are going to manage Federal finances for the rest of this fiscal year.

Suppose the Federal Government is unable to make a substantial contribution. The Governor of California has, for example, advocated a one-quarter percent increase in the sales tax of California to finance this project. Do you think the public perception of the urgency of this problem is such that that kind of a remedy would be generally accepted?

Governor THOMPSON. Senator, I do not know. When spending measures are put on the ballot they are generally voted down, whether for schools or prisons. The prison bond issue was on the ballot in New York the other day and was voted down. School issues in Illinois are being voted down regularly.

The General Assembly of Illinois and I have bipartisanly given high priority, as I said, in our budget, to the construction of new prison facilities, which means we put aside the construction of other worthy capital projects because we thought the protection and safety of our people was more important in the relative value of things; and we have added millions of dollars to the corrections budget for the operation of new facilities. We have raised the pay of correctional officers. We have improved their pension benefits to give some added luster to their very difficult and demanding jobs, one of the most difficult jobs in all of State government. We have reopened the prison industries that were virtually closed under my predecessor. We have tried within our available resources to support these things on our own and not come to Washington asking for help.

I would make one suggestion. I know these are difficult times for the Congress to balance the requests of the President and the American people to cut Federal spending and at the same time maintain services. I go through that exercise myself every year, and I am one who is habitually before the Congress asking for Federal funds in other areas, so I understand your dilemma.

I would simply suggest that all parts of the Federal budget need to be examined and reexamined to see what the priorities are of the American people. My own priorities, which I have expressed to Congress and the administration frequently, are to do those things which would most directly and immediately stimulate the private sector of our economy—transportation, for example—and that would hold our country together.

I would rather take another look at the defense budget and stop viewing it in terms of hardware and view it in terms of national defense as the defense of a Nation that was reasonably well together with a people who believe that they had a sound, balanced, equitable country rather than a people discontented or subjected to the degradations of violent crime.

I think national defense is sometimes equated with military hardware, and I do not think the two terms should be equated.

But the short answer is yes, we are willing to pay our share, but we have gotten to the point where we cannot go it alone any more.

Senator MATHIAS. I think the record confirms that judgment. In New York recently I believe there was an approval of a bond issue for prison construction which, as you say, is an unusual event. Bond issues are being turned down in many cases today. So that is

concrete evidence that the public is concerned enough to be willing to contribute.

One final question. I was intrigued. In the report of the Violent Crime Task Force there was a recommendation that the National Institute of Corrections look at the feasibility of regional prisons.

Governor THOMPSON. Yes.

Senator MATHIAS. This intrigued me, because in 1977 I introduced a bill which would provide for five regional prisons throughout the country in which the Department of Corrections would act as a kind of landlord and make cell space available to States in the region at some nominal cost, whatever it costs to operate; and that that would be at least a safety valve for States who were suffering, as in the case of Maryland, a severe overcrowding.

What is your personal view of that?

Governor THOMPSON. My personal view is regional prisons are a good idea. We did not recommend it on the task force because we thought our most urgent need was for the proposal for matching funds, the 75-25 \$2 billion program, and we ought not dilute the thrust of that recommendation by asking for too much, so we called for further study not only of the regional prisons but of local jails as well.

I think regional prisons are a good idea on several counts. One, States' prison needs may be different at different periods in their history, and it would be foolish for individual States to embark upon costly building programs to meet the prison space needs of the moment when the demographics could tell them they may not need them in that particular State down the line before the useful life of the structure is over.

In our experience in building schools in this Nation we didn't pay enough attention to demographics, and now we have too many closed and useless schools as a result.

Second, the mix of prisoners who could be accommodated within a region is one that is best suited to regional facilities. Some States' needs may be in the area of medium security; some States' needs may be in the area of maximum security. Regional prisons could handle that.

Third, States are doing something like this now. Some States are paying other States to board their prisoners in underutilized facilities in neighboring States. That is true in one instance in the Midwest. And we have examples of State prisoners being housed in Federal facilities that may be underutilized because of the different thrust of Federal law enforcement in the last several years.

Finally, and this is one problem that is never really discussed, but it is of grave concern to prison administrators and Governors of States with large urban populations like Illinois, and I suspect like your home State as well, one of the most difficult problems of discipline that we have in State correctional facilities today that leads directly to violence-prone situations is the congregation of urban gang leaders within a State's correctional system.

We have nearly 18 penitentiaries within the State of Illinois in all classifications of security. We have found that when we take gang leaders convicted of violent crimes off the street and put them in jail, they soon set up a subculture very difficult to discipline even with the strongest security measures. You cannot have a

guard at every cell door 24 hours a day. It is simply not practical. And that leads to internal prison violence, shakedown systems, and who is really in charge is a question often raised.

So to get around that problem we habitually rotate gang leaders who are long-term offenders among the State's prisons, but it is only a temporary palliative measure. We tried to send some of the worst gang leaders to a remote Federal penitentiary across the country. We had them on the bus one morning, and they got as far as Chicago when a Federal judge restrained us from sending them out. He said it was banishment and therefore unconstitutional. And they languished in the Metropolitan Correctional Center in Chicago for 2 years before they finally went back to the State's correctional system.

Regional penitentiaries could help in that regard as well. It is a growing problem for the urban States in our Nation.

Senator MATHIAS. Of course, in that connection we run into the philosophy that there is some benefit to keeping a prisoner within reach of his family, his associates, whatever societal influences may be helpful in his rehabilitation. But you do not feel that that would be sacrificed to a degree that would be——

Governor THOMPSON. Senator, it might be sacrificed, and that might be counter to the best notions of rehabilitative therapy. On the other hand, if it is sacrificed, it is being sacrificed because of the refusal of the prisoner to live within the rules and regulations not to engage in the kind of conduct that leads to the desire of prison administrators to isolate. He has given it up.

Senator MATHIAS. And in those hard-bitten cases, those influences are probably minimal.

Governor THOMPSON. They are probably long gone, Senator.

Senator MATHIAS. Governor, it has been a great help to us to have you here. We appreciate the benefit of your views, and your written statement will appear in the record.

Governor THOMPSON. Thank you very much.

[The prepared statement of Governor Thompson follows:]

PREPARED STATEMENT OF GOVERNOR JAMES R. THOMPSON

When the Attorney General's Task Force on Violent Crime presented its report to Attorney General William French Smith last August, the report recommended that federal legislation be sought to provide \$2 billion across four years to the states for prison construction. It is vital to this nation's criminal justice system that federal resources be allocated to aid the states in meeting the demand for prison bed space. More than two-thirds of our states are proposing or are building at least one major corrections facility. Illinois is above that average. At a cost of more than \$70,000 per bed in many locations, some states have found they cannot afford to add to their inventories of prison beds.

The result is overcrowding, which creates a kind of incarceration that produces human beings at the end of the process who are more prone to violence in many cases than at their intake. States face the potential added costs of prison riots and court-directed overcrowding solutions that drain our state treasuries--treasuries already ravaged by inflation and a recession-wracked economy.

The Task Force recommendations to assist state corrections programs were presented in four parts:

1. We asked the Attorney General to seek \$2 billion in federal funds to be made available over four years to the states for building corrections facilities. Criteria to obtain grants under the program would include a demonstration of need, a 25 per cent contribution by each state toward the overall construction cost, state assurance that operating funds would be available after construction is complete, with funds allocated under a formula measuring a state's need for prison construction in relation to all states.

2. We asked the National Institute of Corrections, which would administer the grants, to develop models within six months for minimum, medium and maximum security prisons of up to 750 beds each from which each state could select an appropriate model or models for construction. Also, we asked that the NIC complete studies on possible regional prisons, the feasibility of prison management by the private sector and funding needs of local jails. The Attorney General was asked to review the NIC findings and other data to determine whether added funding is needed after the four-year program is ended.

3. We asked the Attorney General to support legislation to amend the Federal Property and Administrative Services Act of 1949 to allow the conveyance of appropriate federal property to the states and local governments for correctional use and that such conveyances be given priority over other requests for the same property for other purposes.

We asked for legislation to amend the Vocational Education Act and other related statutes to permit state and local correctional bodies to gain access to existing funds to establish vocational and educational programs inside correctional institutions.

One of the most--perhaps the most--pressing violent crime issue in this nation is finding available space to keep dangerous criminals off the streets. Nearly every state is in crisis in this regard. Violent crime rates are rising. Public demands for harsher sentences and resultant higher conviction rates have produced unprecedented increases in our prison populations.

In Illinois, the situation is one which we reassess almost daily. Since 1977, we have spend \$87 million in capital funds in Illinois to add prison beds to our adult corrections system. We have added 3,500 beds to bring our total to 13,250. Each of those beds is occupied. The 3,500 prison beds we already have added to the Illinois adult prison system since 1977, have placed an added demand on our operating funds of more than \$42 million each year atop

the construction costs. An additional 1,500 beds are in the construction or planning stage. But our prison officials estimate that our prison capacity will be 2,100 beds short of our estimated 16,800 prison population by 1985. We are now looking for sites and funds to meet this foreseen need.

The situation is particularly ominous in light of a federal court class action decision on the third of this month which held that the double-celling of inmates at our maximum security institution at Pontiac, Illinois constitutes "cruel and unusual" punishment under the Eighth Amendment. The court has given us 60 days to propose a plan to eliminate double-celling at the Pontiac Correctional Center by converting to single-cell housing. We are going to appeal that decision, but the outcome could clearly exacerbate the already heavy demands on our state treasury to the point we can no longer make ends meet.

If it stands, the Pontiac order would displace 400 inmates. There would be no space to accommodate them. Further, if the court ruling is upheld, it would displace a total of 3,000 inmates throughout our entire Illinois system. Again, we cannot accommodate this with our present capacity and we must regard it as a federal mandate because of its federal court origin.

It is against this critical backdrop, then, that I appear before you today.

I am in support of Senator Dole's proposal, Senate Bill 186, which has been introduced in the House by Representative John Porter of Illinois. In its present form it is a forward-thinking measure which, if approved, would be of inestimable help to states like Illinois, which are being pressed to the wall by the financial demands of a rising prison population at a time when every area of government service is being critically pared back to match the inflation-recession situation.

Putting violent criminals behind bars is a goal that extends from coast to coast. It is not indigenous to any one state. By the same token, providing space to lock them up is a national problem. It is in that context that I urge you to view with favor the request that resources be found to help individual states meet our urgent needs for the added prison beds to meet a truly legitimate national goal.

Senator MATHIAS. Our next witness is Representative John Edward Porter of Illinois.

Mr. Porter, under our practice your statement will be included in the record, and we are glad to have such comments as you may make.

STATEMENT OF HON. JOHN EDWARD PORTER, A U.S. REPRESENTATIVE FROM THE STATE OF ILLINOIS

Mr. PORTER. Senator Mathias, I very much appreciate the opportunity to testify before the committee as sponsor of House legislation, House bill 4620, which is similar to Senator Dole's bill. I am very interested, of course, in what action the committee might take.

I have submitted for the record extensive testimony, including exhibits, that I hope the committee will consider, and I would like to make a short statement this morning.

Senator Mathias, as a Nation we think very little about our prisons. Indeed, we seldom think of them at all. Our actions are even fewer. Nearly one-half of the prisoners confined are in facilities built prior to 1925. Many are warehoused like so many cattle in buildings as much as a century and a half old and bursting at the seams from overpopulation.

In recent years the State legislatures and Governors have responded to growing crime rates with tougher criminal laws. Man-

datory minimum sentencing, determinant sentencing, and in some States, the end of parole have compounded the problem of overcrowding. At the same time, the cost of building and maintaining prisons has grown in quantum leaps.

The Task Force on Violent Crime, cochaired by Governor Thompson, ascertained that current per bed costs have risen to as high as \$70,000, and yet, the building cost is less than 8 percent of the total cost of a prison. The other 92 percent goes into debt service, operations, and maintenance.

The States have responded to these problems as well as they can, but prisons are not glamorous issues. Legislators faced with deciding how best to spend declining revenues often find greater constituent needs and demands elsewhere. The States have therefore turned to more innovative approaches to deal with prison funding. Oil and gas leases have been dedicated for prison construction and renovation. Bonds have been let to hedge costs. Transfers of existing State and Federal land and buildings have all been used.

In addition, the Federal courts have identified a number of constitutional issues in the operation of prisons. Thirty-six States now have one or more prisons operated under a Federal district court consent decree.

Together, the constitutional issues and the court-imposed mandates upon the States create a clear responsibility for the Federal Government to act to facilitate the States' handling of the serious problem.

Senate bill 186 presents the best practical way to do so. In a time of Federal fiscal austerity, Senate bill 186 does not create another open-ended Federal giveaway program. The provisions in the bill operate within the spirit of the New Federalism to facilitate and maximize the efforts of the States themselves.

In order to qualify for funding, the States must first show a commitment to follow through and pay their own portion. The States must put up a significant matching share for flat grants and then only for projects with a demonstrated potential for meeting constitutional and court-ordered requirements.

Debt service would be guaranteed up to 5 percent by the debt service grants. In addition, an information clearinghouse is provided to share information among the States and to avoid duplication and waste.

The method in this bill is practical, restrained, and in keeping with the President's program of federalism. The cost is relatively modest and the dollars invested now will help prevent an even greater demand in the future.

I appreciate very much the opportunity to testify before the committee.

Senator MATHIAS. We are very grateful to you, and we appreciate your interest in this subject.

As you say, probably there is not enough thought given to the whole problem of penal institutions until there is some kind of violent eruption which forces it on the public's attention.

At exactly what stage in the legislative process is the companion bill to Senate bill 186?

Mr. PORTER. It has just been introduced, Senator Mathias.

Senator MATHIAS. Have you been able at this early stage to attract cosponsors?

Mr. PORTER. We have just recently asked for cosponsors, and there are already 12 on the bill.

Senator MATHIAS. Yesterday this committee reported to the full Senate, Senate bill 1630, which includes a position abolishing parole and establishing a system of determinant sentence. And I am wondering if you have any views on what that measure, if it ultimately is passed by the Senate, passed by the House and approved by the President, will have on the prison inmate population?

Mr. PORTER. Of course, it is going to cause the same problems at our level that have already been caused in many States like my own which has abolished parole. It will increase the pressure already being felt of overpopulation in the prisons and extremely crowded conditions, the same ones the Federal courts have repeatedly found to amount to cruel and unusual punishment in violation of the due process clause of the Constitution. So I think it will be adding to the problem, and there must be some other way to address it.

I think the Senate bill and our companion bill are a fine approach and a sensible approach.

Senator MATHIAS. I think what we are clearly seeing is we not only have to look at the conditions we have today, but with these changes in prospect we must view not only the demographic future but also the future as it may be affected by alterations in the system. So we appreciate your early warning.

Thank you very much.

Mr. PORTER. Thank you very much, Senator.

[The prepared statement of Representative Porter follows:]

PREPARED STATEMENT OF REPRESENTATIVE JOHN EDWARD PORTER

Mr. Chairman: We don't think much of our prisons. In fact, we seldom think of them at all. We feel, perhaps that those who violate the social contract must pay the price under the penalty clause. Prison is, as a result of a crime against person or property, a just dessert.

For years, our complacency and our indifference have compounded the suffering of those in prison. Their punishment often surpassed a "just dessert" and has become—and has been so adjudicated—"cruel and unusual", both inhumane and unreasonable.

If the punishment is to fit the crime, the prisons must fit the prisoner better. Overcrowding; old deteriorated facilities; and inadequate revenues have placed a burden on the criminal justice systems which often results in further crimes of violence and destruction which they were theoretically designed to both punish and deter.

The demands placed on the state's criminal justice systems have increased dramatically during the past few years. The cost of goods and services has risen, the overcrowding problem has become chronic, prison populations have significantly increased for the first time in three years, and federal court reform decrees have all combined to drain correctional systems throughout the nation. In some states fiscal restraint is so tight that they can not even meet the costs of operating their criminal justice systems, let alone spend large sums of money to comply with court reform decrees.

A federal-state partnership in which federal resources are employed to facilitate the states to regain their control over the responsibility for their criminal justice system is clearly necessary. Safeguards must be built into this new federalism program to ensure that federal dollars go to the truly needy states. The Criminal Justice Construction Reform Act provides the safeguards to create a successful federal-state partnership to facilitate the states recovery and allow them to run their systems within the minimal constitutional standards outlined by the federal courts.

In September, the Bureau of Justice Statistics released a report entitled "Prisoners at Midyear 1981" which documented the number of prisoners under the jurisdiction of State and Federal correctional authorities through the second quarter of 1981. (See Appendix A for the statistics issued by the Bureau). The report showed that the State and federal prison populations swelled by more than 20,000 inmates in the first six months of 1981. This 6.2 percent increase in the first six months of 1981 is greater than the growth rate for all of 1980. In fact, a three year trend of prison population stability (less than 300,000 inmates at yearend 1977 and 300,000 inmates at year-end 1980) has now been reversed and the growth rate for 1981 could be as high as 13 percent.¹

The growth rate is skyrocketing as a result of a many independent variables including a shift in the states' policies and procedures for incarcerating offenders. In the past four years, 37 states have passed mandatory sentencing statutes and at least 15 states now have determinant sentencing laws that bring "truth to sentencing" by sending violent offenders to prison for a fixed term that cannot be reduced by parole.² Mandatory and determinant sentencing have increased prison populations by removing a judge's discretion to allow convicted criminals to be sentenced to alternative punishments or to take extenuating circumstances into account when sentencing convicted criminals. Four states—Indiana, Maine, Illinois, and New Mexico—have recently outlawed the possibility for parole to reduce a prisoner's sentence.³ The result is a longer sentence for criminal and additional strain on the criminal justice system.

The shift in state policy toward minimum mandatory sentencing, determinant sentencing, and outlawing the use of parole has a large impact on the

tremendous growth rate of the prison population. The "baby-boom" generation is also a factor which must be considered. The 18-25 age group historically commits the greatest number of crimes. The "baby-boom" generation has just passed through this age group which means that we have had more potential participants in illegal activity than in years past. In addition, our law enforcement officials have become more effective in apprehending offenders. The result is more people being tried and convicted for more crimes than ever before. The combination of more criminals sentenced to longer terms threatens to burst the already strained seams of our prison systems.

When these factors are taken in the light of the undisputed fact that our nation's prisons are inhumanely overcrowded, the impact on the state criminal justice facilities and the inmates of those facilities is predictable. The Texas prison system is the largest in the country and has custody over 30,954 convicts. Overcrowded conditions have forced officials to house some prisoners in tents and make other prisoners sleep on the floor.⁹ Other states have resorted to double bunking and "hot bedding" in order to cope with their prison populations. In some extreme cases, non-violent or less violent criminals are released prior to the end of their sentences to make room for more violent offenders.

Many times, overcrowded conditions result in charges of "cruel and unusual" punishment filed by inmates. A provision of S.10 requires the Justice Department to make these claims on the behalf of inmates. Although a good number of the claims are justified, a proliferation of unnecessary litigation costs the states millions of dollars annually. They must build defenses to the charges only to have the cases dismissed on technical grounds.

Judges are often discouraged from sentencing convicted criminals to prison when they know that they will be adding to the overcrowding problem. Minnesota recently passed new sentencing guidelines that require judges to take prison capacity into account when sentencing convicted criminals. Similarly, Oregon is under court order to increase the use of probation to keep its inmate count as low as possible. All too often, offenders are allowed to go free because the criminal justice system can not handle them.

When compared to the costs of all government functions, corrections costs are disproportionately a state and local responsibility. The National Institute of Justice (NIJ) reports that state governments account for nearly 60 percent of government expenditures for correctional activities, and the local governments account for just over one-third of that figure. In fiscal year 1977, for example, direct current expenditures--the current cash outlays for the purchase of non-capital goods and services in adult facilities--totalled more than \$2.4 billion across all levels of government. Of that total, \$1.5 billion was spent at the state level, \$800 million at the local level, and only \$150 million at the federal level. For that year, total direct current expenditures represented an average operating cost of \$5,461 per inmate. (See Appendix B for the Direct Current Expenditures Per Inmate for Federal, State, and Local Facilities; Direct Expenditures at Four Levels of Aggregation by Level of Government; and Direct Current Expenditures Per Inmate in State Prisons by States for Fiscal Year 1977.)

The operating costs incurred by the state criminal justice systems vary greatly depending on the following factors:

1. The inmate-staff ratio. States that have a higher ratio normally spend less per inmate. None of the states with over a \$7,000 direct current expenditure per inmate had an inmate to staff ratio greater than 6:1.
2. The extent of inmate crowding. States housing a higher percentage of their inmates in crowded units spend less per inmate.
3. The incarceration rate. States confining a greater percentage of their citizens spend less per inmate. It is interesting to note that all of the southern states had direct costs per inmate of less than \$8,000 and had most of the higher inmate-staff ratios, tended to be overcrowded, and had incarceration rates in excess of 100 per 100,000 population.

Capital outlays for all corrections institutions were \$415 million for Fiscal Year 1977. 94 percent of that sum was spent at the state and local levels and a large portion of this percentage was spent to expand and upgrade correctional capacity. The capital costs of new construction are dependent on several variables:

1. The security classification of the facility. President Reagan's Task Force on Violent Crime estimated that it cost nearly \$70,000 per bed to build a maximum security facility, \$50,000 to build a medium security facility, and about \$30,000 per bed for a minimum security facility. These costs have increased substantially since the NIJ study of 1977. The NIJ estimated that it cost \$46,413 for a maximum security facility, \$26,000 for a medium security facility, and \$18,459 for a minimum security facility.

2. The Overall size of the facility. Larger construction projects allow "economies of scale" to be employed and are, in theory, proportionately less expensive than building smaller facilities.

3. Regional variations in the construction price index. Simply put, some goods and services related to constructing prison facilities cost more in some sections of the country than in others. The Task Force reported that Alaska spends nearly \$130,000 per cell to build new facilities. The 48 "Continental" states spend considerably less per bed for the same facilities. Much of the expense incurred is a result of importing the materials and labor necessary to build prisons in the Alaskan tundra.

In October, I requested that the National Institute of Corrections provide me with information regarding state prison construction projects. The NIC Information Center in Boulder, Colorado contacted each state to determine construction projects completed within the past year, construction currently in progress, and construction authorized or proposed by the states. A final report and narrative study will be available from the Information Center later this month. Preliminary data has been made available for this testimony. (see Appendix C for summaries for each category of construction)

The projected results of this survey show that the states are trying to cope with overcrowded facilities by building or planning to build entire new prisons or to modernize or renovate existing facilities. The states are doing the best that they can given the fiscal restraints dictated by our current economic picture. Although it is important to see how much construction has been completed, begun, and proposed, it is equally important to see what construction has not been completed due to a shortage of initial construction or operating funds. In Minnesota for example, a 400 bed maximum security prison was built at a cost of \$31.8 million and was scheduled to open in January of 1982. The opening has been delayed indefinitely because the state cannot meet the \$10 million first year operating costs.¹⁰ Rhode Island, which has the fourth smallest criminal justice system, is currently building a 242 bed maximum/intake unit at a cost of \$7.5 million. The intake unit is now nearing completion but will not be opened until the summer of 1982 because the operating funds had to be diverted to support an existing facility. Rhode Island has already spent \$7.5 million, but a \$1.7 million deficit threatens to lay the initial investment to waste.¹¹

Eight states—Colorado, Florida, Idaho, Massachusetts, Mississippi, South Carolina, Vermont, and Virginia—reported to the National Institute of Corrections that they were unable to complete planned prison construction projects. South Carolina began to prepare a site for a 596 bed medium security unit but worked had to be stopped until the interest rates on their construction bonds are more favorable. Even with a Triple A bond rating, South Carolina is faced with paying between 14-16 percent on construction bonds which would leave the state with a tremendous debt to service in the coming years. In addition to the high interest rates, South Carolina correction officials saw a \$33 million appropriation for prison construction cut to \$2 million by the state legislature. The pressure created by the allocation cut and the high interest rates has left South Carolina "in a real dilemma."¹²

Unfortunately, South Carolina's experience is not atypical. Idaho may have to scrap plans for a 96 man cellhouse if additional funds are not appropriated

in the next legislative session. The state has a contingency plan to save the initial \$750,000 investment that calls for opening a 60 bed minimum security facility rather than 96 bed maximum facility.¹³ Colorado also relies on alternate plans when reduced funding necessitates action and has radically cut original construction plans to save initial investments.

A \$500,000 bond issue question failed in New York earlier this month by only 5,000 votes out of 2.5 million cast. This leaves New York in a dilemma similar to that of South Carolina. Governor Carey sums the problem up best: "We can't dip into the expense budget for capital structures. ... I feel those who opposed the issue should come forth and tell us how to do it."¹⁴

Clearly, the state officials are doing the best that they can within the limited fiscal resources allocated to them. In the face of their overcrowded prison conditions and the increased growth rate, the states may be losing the battle. Additional pressure has been placed on the already overburdened state criminal justice administrators by federal court judges who have mandated reforms in state correctional systems.

As of February, 1981, individual prisons or entire prison systems in at least 36 states, two territories, and the District of Columbia are either under direct court order or are involved in litigation concerning the constitutionality of prison conditions.¹⁵ (See Appendix D for a complete list of those states under court order or involved in litigation.) Federal Court decrees are often far reaching and mandate sweeping reforms of prison conditions to bring them to some minimum constitutional standards. There have been a number of landmark decisions in the area of the constitutionality of prison conditions. Three cases in particular set legal precedents that have had the greatest impact on the states: Pugh v. Locke, Alabama, 1976; Hutto v. Finney, Arkansas, 1978; Rhodes v. Chapman, Ohio, 1977.

One of the first and most comprehensive court ordered reform decrees was handed down in 1976 in the Alabama case of Pugh v. Locke. Judge Johnson's opinion and sweeping reform decree is attached as Appendix E. The Judge ruled that the conditions throughout the Alabama prison system constituted "cruel and unusual" punishment in violation of the 8th Amendment. He issued a remedial order aimed at correcting deficiencies in virtually every aspect of prison life: massive overcrowding; unsanitary conditions in the living and food service areas; inadequate plumbing, heating, lighting, and ventilation; inadequate staff resources; a lack of protection from violence.

The Judge appointed a 30 member "Human Rights Committee" to monitor the implementation of the explicit standards prescribed by the court. He abolished the "trustee system", in which the guards were actually other prisoners, employed by the state to save on staff costs. The sweeping reform decree mandated that every prisoner was to have his own cell, a bed off the floor, and a minimum of 60 feet of cell space. Judge Johnson closed the Alabama prison system to any new inmates until the state's prison population was cut in half.

A Court of Appeals modified the lower court decision and held that there is no constitutional basis for the court's requirement that all cells be individual cells. They also found no reason for the appointment of a specific "Human Rights Committee" to monitor the implementation of the court's order, but did agree that some oversight was needed to assure compliance. The Supreme Court declined review on the substantive merits of the case, but granted certiorari for the sole purpose of ordering the dismissal of the state of Alabama and the Board of Corrections on the grounds of 11th Amendment immunity from suit. The Court did not remove individual state officials as defendants and left the substance of the original decision completely intact.

The 1978 decision in the case of Hutto v. Finney established another important precedent. The United States Supreme Court upheld a lower court award of \$20,000 in Attorney's Fees to be paid out of the Arkansas Department of Corrections funds for "bad faith" in failing to comply with previous court reform orders, and dragging out litigation over a nine year period. This case began in 1969 as Holt v. Sarver, but the state successfully delayed full compliance with the initial court order for nine years and were fined for their procrastination. As a result of this precedent, the Maryland Department of Corrections is now

liable for Attorney's Fees in a similar suit that could cost Maryland between \$3-4 million in Attorney Fees. The impact of the Hutto precedent is just now beginning to be felt by the administrators of the state criminal justice systems, and will be employed with greater frequency in the future.

On June 15, the Supreme Court reversed a lower court decision in the Ohio case of Rhodes v. Chapman. The lower court ruled that conditions in an Ohio maximum security prison were unconstitutional. The Supreme Court held that the violation in question did not constitute "cruel and unusual punishment" under the 8th Amendment and applied to the states through the 14th Amendment. But precedent was set by the Court to review prison conditions on a case by case basis to determine if the conditions in question constitute "cruel and unusual punishment." In a concurring opinion, Justice Brennan wrote "a court is under the obligation to examine the actual effect of challenged conditions on the well-being of the prisoners."

Complying with Court ordered reform decrees has and will continue to cost the states large sums of money. In October, I requested the Congressional Research Service to conduct a study of the states to determine how much they have spent to comply with reform decrees. At this time, however, the results of that study are not yet available. The National Prison Project of the American Civil Liberties Union Foundation conducted a cost analysis and estimate for the Pugh decree. (Their findings are included as Appendix F)

After an initial study, Alabama estimated that it would cost nearly \$200 million to fully comply with the court order. At the time of the ACLU Foundation study, the Pugh decision was still on appeal and many "cloudy areas remain(ed) in the conclusion (of the study) due to the impossibility of knowing in some instances which expenditures (were) truly occasioned by the court order, or which would have been incurred anyway."¹⁶ The ACLU Foundation study estimated that compliance would initially cost Alabama at least \$28.5 million. Once the extra accommodations were included for expansion through 1980 and 1985, the cost estimates increased to \$44 million for 1980 and \$46.1 million for 1985.

Rhode Island is currently under a court reform decree. In order to fully comply, Rhode Island will be forced to spend at least \$2.5 million to modernize and/or construct new facilities.¹⁷ This court order came at a time when the state cannot afford to open a newly constructed maximum security facility because it lacks initial operating funds and is faced with a 9.8 percent prison population growth rate in the past six months.

The combined effect of court ordered reform decrees, dramatically increased prison population, and persistent overcrowding have pushed the states beyond their capacity adequately to fund their criminal justice facilities. Construction costs are rising, litigation is increasing, and operating costs have gone through the ceiling. The states need some form of support from the federal government which should take some responsibility to aid the states as a result of the federal court decrees imposed on the states and localities. The question is to what extent must the Congress go to insure that the federal government meets its responsibility to the states, their citizens, and the inmates of the correctional facilities.

Inmate's rights are guaranteed by the Constitution and upheld by the courts of this country. The Justice Department has been charged by S. 10 to make cases on the behalf of prison inmates whose rights have been violated. The rights of the individual citizens to protection by the government from danger and violence are, for the most part, being upheld by the states even with their limited resources. The Congress must continue to insure this federal responsibility by passing meaningful legislation to protect both the rights of the inmates and the rights of our law abiding citizens.

The Congress must also aid the states in meeting their responsibilities. The Law Enforcement Assistance Administration (LEAA) was authorized by the Omnibus Crime Control Act of 1968 in response to then President Nixon's "War on Crime". The shortcomings of the LEAA are well documented, but unfortunately many components of the more solid programs have been forgotten. For 13 years, the LEAA provided anti-crime grants to the states to upgrade their criminal justice programs and facilities. This type of federal support to facilitate the states

in meeting their responsibilities ended when the Carter Administration dismantled the Administration. Since that time, a void has existed in the area of a federal-state cooperation in the area of criminal justice.

In March, Attorney General William French Smith charged a nine member Task Force on Violent Crime to study the current problems with the states' criminal justice systems. They made 64 recommendations to the Attorney General to improve the system. Recently, President Reagan declared his own war on crime from the "bully pulpit" in New Orleans. The Congress has reacted to both catalysts with legislation that incorporates the Task Force Recommendations and the spirit of the President's address. Senator Dole introduced the Criminal Justice Construction Reform Act, which responds directly to the Task Force recommendation that we appropriate money to modernize or construct new prison facilities, incorporates the spirit of the President's address, and establishes a program of New Federalism in which a temporary federal-state partnership in the area of prison modernization and construction will help the states to regain control of their criminal justice facilities.

Today, nearly half of our prisoners are housed in criminal justice facilities built prior to 1925. S. 186 would create a bilateral partnership between the federal government and states which exhibit a need for federal support. At the heart of the bill are provisions to allow the federal government to provide funds to needy states so that they can renovate deteriorated facilities or construct modern facilities, and to provide the necessary transfer of technical information to assure that the states have the proper resources to use federal funds to their greatest potential.

A state's need for federal support would be determined by using a formula that considers the total population of the state, as well as the volume of activity of, and the total expenditures on the criminal justice system for the state in the preceding year. States which exhibit need would submit a seven year plan, with annual revisions and updates, for a construction and modernization program. State plans would be required to meet 19 specific criteria to assure that the state's commitment to an improved criminal justice system is a central theme in the plan. These criteria insist that the state agency administering the plan will encourage the modernization of prison industry and work release programs; take into account the needs and requests of the local governments for the construction and renovation of criminal justice facilities; and perhaps most importantly, implement policies and procedures to assure that federal funds will be used in addition to, not as a substitute for state funds.

Seventy-five percent of the initial costs of building state prisons will be borne by the federal government and the states will match with 25 percent of the construction costs. States must also guarantee that the operating funds for completed facilities will be available without using federal funds for operating costs. The 25 percent match and guarantee of operating costs will firmly set the state's commitment to a sound construction program.

Federal funds will be allocated to states which exhibit need in two forms--demonstration grants and a five percent interest subsidy for Criminal Justice Facility Construction Bonds. The demonstration grants will be awarded to states that explore alternatives to incarceration with programs that exhibit a proven potential. The debt service grants in the form of five percent interest subsidies will allow the states to sell bonds competitively on the open market. For example, the real debt service charged to the states on a bond issue at nine percent interest will actually only be four percent because federal subsidies will cover the cost of the first five percent. This interest subsidy program would facilitate state bond issues by substantially reducing the real cost of bonds to the states.

S. 186 provides a mechanism to allow the federal government to recover or withhold payments to states under the following conditions:

1. If within twenty years after federal support terminates, the owner of the facility ceases to be a state or local public agency or the facility ceases to be used for the purposes for which it was constructed, the United States would be able to recover "from the applicant or owner of the facility an amount which bears to the then value of the facility the same ratio as

the amount of such Federal Funds bore to the cost of the facility financed¹⁸ with federal funds.

2. Funds may be withheld if there has been a failure to comply substantially with the 19 criteria set forth in the state plan or if "in the operation of any program or project assisted under this act there is a failure to comply substantially with any applicable provision of this act."¹⁹

In addition, S. 186 also sets-up a clearinghouse on the Construction and Modernization of Criminal Justice Facilities to collect and disseminate to the public information pertaining to the construction and modernization of criminal justice facilities. This federal clearinghouse would greatly facilitate the information transfer necessary for the states to explore alternatives to incarceration as well as allow the states to benefit from cost-saving construction techniques devised by other states and reported by the clearinghouse.

Recently, Attorney General Smith has stressed the importance of transferring surplus federal properties to the states for use as correctional facilities. The Watertown Air Force Station in Watertown New York, a 70-acre site in upstate New York, was transferred to New York State on September 28. S. 186 includes a provision to facilitate the transfer of surplus federal properties to the state, without cost to the states, for use as criminal justice facilities. It is important to note that many of the surplus properties will be best suited for use as minimum and medium security facilities, not as maximum security facilities which are among the oldest and most deteriorated facilities in our criminal justice system.

The states' criminal justice systems are overburdened by court ordered reform decrees, increasing growth rates, and the chronic problem of overcrowding. The costs incurred by the states to build and maintain prisons are increasing annually. Too many times, states are forced to stop construction altogether or radically alter plans because they lack the funds necessary to complete planned projects. In the worst case, states have built brand new modern prison facilities only to have them lie idle until operating funds become available. Clearly, the states are in need of support.

The LEAA program did not create the federal-state partnership necessary to tackle the enormous problems of criminal justice administration in our nation. S. 186 and H.R. 4620, the House version of S. 186 which I introduced on September 29, will create the necessary bilateral federal-state partnership. States will prove their commitment by meeting the stringent criteria outlined in the bill before being eligible for debt service and demonstration grants. Further, S. 186 and H.R. 4620 provides for technical information transfer to facilitate states to compose sound construction programs.

The program outlined by S. 186 is not a panacea to end chronic overcrowding and decrease the growth rate of the prison population. It will, however, facilitate the states' ability to cope with federal court ordered reform decrees and provide a temporary partnership to enable the federal government to make its resources available to the states in this critical area.

Footnotes

1. "Prisoners at Midyear 1981", U.S. Department of Justice, Bureau of Justice Statistics Bulletin, p. 2.

2. "Prison House Blues Are Sung in 50 State Capitols", The Washington Post Company, November 2, 1981.

3. "U.S. Prison Population Jumps; Double '80 Rate," Washington Post, October 5, 1981.

4. "Prisoners at Midyear 1981," U.S. Department of Justice Bureau of Justice Statistics Bulletin, p. 2.

5. Ibid. p.3.
6. "U.S. Prison Population Jumps; Double '80 Rate", Washington Post, October 5, 1981.
7. "American Prison and Jails Volume III: Conditions and Costs of Confinement", U.S. Department of Justice National Institute of Justice, October 1980. p. 116.
8. Ibid. p. 137.
9. Ibid. p. 119.
10. Preliminary results of the National Institute of Correction study on state prison construction.
11. Ibid.
12. Telephone interview with Mr. William Leeke, Commissioner of the South Carolina Department of Corrections.
13. Preliminary results of the National Institute of Corrections Study on construction by the states.
14. "Carey Cites Fund Limits on Expanding Prisons", New York Times, November 11, 1981. p. A20.
15. National Governor's Association Survey, attached as Appendix D.
16. "The Alabama Prison system: An Analysis and Estimate of the Cost and Economic Consideration Resulting from the orders of the United States District Court in Pugh v. Locke, (Civil Action No. 74-57-N) and James V. Wallace, (Civil Action No. 74-203-N)", The National Prison Project of the American Civil Liberties Union Foundation, March 1977, p. 3.
17. Telephone interview with Mr. John J. Moran, Rhode Island Department of Corrections.
18. S. 186, p. 25.
19. Ibid. p. 24.

Senator MATHIAS. Our next witness is the Resident Commissioner from Puerto Rico, Mr. Corrada.

And while he is coming to the desk, I am wondering if Attorney General Sachs would approach the bench here for a minute.

Mr. SACHS. Yes, your honor.

STATEMENT OF HON. BALTASAR CORRADA, RESIDENT COMMISSIONER, PUERTO RICO, ACCOMPANIED BY HECTOR REICHARD, SECRETARY OF JUSTICE OF THE COMMONWEALTH OF PUERTO RICO, AND CHARLES JIMENEZ NETTLESHIP, ADMINISTRATOR OF CORRECTIONS OF PUERTO RICO

Commissioner CORRADA. Good morning, Mr. Chairman. I am pleased to appear today.

Senator MATHIAS. We are very pleased to have you here. We are always pleased to hear from the Commonwealth of Puerto Rico.

Commissioner CORRADA. Thank you, Mr. Chairman.

I am accompanied by the attorney general of the Commonwealth of Puerto Rico, Hon. Hector Reichard, and by the Administrator of the Administration of Corrections of Puerto Rico, Mr. Charles Jimenez Nettleship.

Senator MATHIAS. We are happy to have each of you here.

Mr. JIMENEZ NETTLESHIP. Thank you.

Commissioner CORRADA. I am submitting for the record my full testimony, and I would also ask that the written testimony of Mr. Jimenez Nettleship be made a part of the record as well.

Senator MATHIAS. It will be included in the record in full.

Commissioner CORRADA. I appreciate the opportunity, Mr. Chairman, to appear today before the subcommittee to discuss the important role that the prompt enactment of S. 186 would play in our efforts to fight crime in the whole Nation, including Puerto Rico.

I also appear here to seek an amendment to the bill that would provide State-like treatment to Puerto Rico, thus enabling 3.2 million American citizens there to benefit fully from the provisions of the Criminal Justice Construction Reform Act.

Senator Robert Dole is to be highly commended for introducing this bill, legislation to help alleviate the severe strains that the alarming increase in violent crimes in the Nation has placed on the existing correctional facilities of all the States. I fully support the objectives and the concept of this legislation.

The inadequate correctional facilities in Puerto Rico, as well as those of many States, have an urgent need for resources such as those that could become available if this bill is enacted. Unfortunately, the bill contains a set aside provision limiting the amount of funds that could be spent in Puerto Rico, Guam, the Virgin Islands, and the other U.S. offshore territorial jurisdictions to not more than 3 percent of the total appropriations. In fact, the bill does not even guarantee that any appropriation be afforded.

I oppose the differential treatment accorded to Puerto Rico under section 202(a)(1), which will handicap efforts to operate our criminal justice facilities. It makes no sense to place U.S. citizens in Puerto Rico into a legislative formula on a set aside basis under any circumstances. The very words imply treatment in a discriminatory manner.

Furthermore, Mr. Chairman, Puerto Rico has traditionally been accorded treatment as a State in legislation pertaining to crime, law enforcement, juvenile justice, and corrections, given the fact that we are as American citizens subject to Federal jurisdiction as if we were a State in criminal matters. We have a U.S. District Court in Puerto Rico with similar functions as those in the 50 States.

We have 3.2 million inhabitants, which is a population higher than that of 25 of the 50 States, and being a U.S. domestic area, there is a constant and uninterrupted mobility between people in Puerto Rico and the U.S. mainland, including the criminal elements.

As Attorney General Smith recently pointed out in his statement before the subcommittee, the truth is that criminals are already straining the resources of States where prisons, often old and decrepit, are seriously overcrowded.

The penal institutions in Puerto Rico very dramatically portray that situation, with two jails over 100 years old and three others constructed on or before 1926 out of a total of seven district and regional jails.

The present penal population in the correctional institutions of Puerto Rico is 4,380 inmates. The capacity of the correctional facilities of Puerto Rico based upon the application of the recognized

standards which require 55 square feet of housing space per inmate, plus 35 square feet of dayroom program space per inmate, is only 1,790 inmates. This amounts to an overcrowd of 2,590 inmates, almost three-fifths of the island's actual penal population systemwide.

The cost of constructing sufficient new bed space to provide the current penal population with housing conforming to recognized standards is estimated at \$134.7 million. The aggregate construction cost to provide sufficient new bed spaces to the current as well as the projected 1985 penal population with recognized standard conforming housing is estimated at \$229 million. This is exclusive of remodeling and reconstruction costs of existing bed space.

Prison overcrowding and wornout jails are not the only problems of the correctional facilities of Puerto Rico. There is a lack of proper sanitation and absence of health facilities or adequate medical or psychological services, triple bunking of young adults, and the failure to protect pretrial detainees from attack.

As pointed out recently by the Honorable Juan Perez Jimenez, U.S. District Court judge, in a civil rights case in which the entire corrections system of Puerto Rico was challenged as violating the rights of prisoners and pretrial detainees, the U.S. District Court's intervention, Mr. Chairman, in this case was not on a set aside basis. The case was decided on the basis of the application there through statutory provisions of the Constitution and the provisions of the eighth amendment which prohibit cruel and unusual punishment.

May I say, of course, that civil rights laws enacted by the Congress of the United States apply fully in Puerto Rico as if Puerto Rico were a State. These constitutional protections to Puerto Ricans and American citizens apply there, and there is no basis to deny inmates in Puerto Rican jails the minimum standards of treatment which apply elsewhere in the Nation; and certainly, Mr. Chairman, no basis to deny the law-abiding population of Puerto Rico the kind of corrections system that may adequately protect them from the criminal elements in our society.

Mr. Chairman, I do not want to take up more of your time with my full statement. You have it before you.

In summary, there is a compelling need to undertake comprehensive improvement in our local correctional system which can hardly be achieved without Federal financial assistance of the type envisioned in S. 186.

The officials accompanying me in their different capacities are eminently qualified to answer any detailed questions you may have on the justice and correctional system of Puerto Rico.

Mr. Chairman, I forcefully urge you to consider equal treatment for Puerto Rico in the various provisions of S. 186, and of course to enact this legislation which is so important to the Nation as a whole.

On the House side, of course, I commit myself to fully supporting H.R. 4620, just recently introduced by my colleague there, Congressman Porter, who just testified.

Senator MATHIAS. Thank you very much for your statement.

The committee is, of course, fully cognizant of the conditions under which Puerto Rico is laboring in this respect, and with the

Federal court preliminary injunction to upgrade the prisons in the Commonwealth of Puerto Rico.

Suppose that under the conditions of austerity with which you are all too familiar or just the general delays which we encounter, one of these bills is not enacted into law in the near future. What do you foresee as to the ability of Puerto Rico to comply with that injunction?

Commissioner CORRADA. Let me say by the way, Mr. Chairman, that among the inmates in State penitentiaries in Puerto Rico we have now close to a population of 1,000 Federal detainees, because there is no Federal corrections center in Puerto Rico, so that Federal detainees there or detainees under the jurisdiction of the Federal court in Puerto Rico are sent to the State prison system.

I would say, Mr. Chairman, that although Puerto Rico is willing under the terms of this bill, and of course under its own responsibility, to provide for a State corrections system to permit us financially to the utmost to improve our correctional system, taking into consideration our already strained budget that we believe it would be impossible to comply with those mandates in the kind of time frame that we envision unless there is some kind of Federal assistance along the lines of those contemplated in this bill.

I think Mr. Jimenez could add about the current efforts of the Commonwealth in providing more financial assistance for the corrections system as an indication that we are not only coming here to ask the Federal Government to help us in resolving the problem, but that we have a great interest in the Commonwealth of Puerto Rico with our own resources to commit to the objectives contemplated in the bill.

Mr. JIMENEZ NETTLESHIP. Mr. Chairman, the Governor of Puerto Rico has given top priority to the administration of corrections. He has doubled the operational budget, and we have assigned \$11 million for reconstruction of new jails; and for the next fiscal year we are planning to add another \$35 million in that area.

Commissioner CORRADA. Our Attorney General, if you would like to add about the importance given by Governor Romero and his administration to this subject.

Mr. REICHARD. Senator, definitely our administration is committed to bringing the situation into the standards issued by the court in the preliminary injunction. We are working in that direction, and of course, we are hoping to meet those standards. But as we all know, dollars are very scarce in the Commonwealth of Puerto Rico as here on the mainland. And I think we all have to share part of the cost of this.

Looking at the statement made by our Congressman, if we are bound by Federal standards, we certainly hope to be treated in the same way as other States having the same problem.

I am addressing the part of the amendment he is proposing, and I think it is essential that if we have to perform in the same manner we get the same tools to deal with the problem.

As an A.G. in Puerto Rico, as any other A.G. in this country, we have the responsibility of bringing these people to trial who eventually or are at the time of trial detainees. It is very difficult to be prosecuting people knowing that you already have an overcrowded jail, and you wonder what your role is to be.

In Puerto Rico the A.G. has a more extensive jurisdiction than normally in the States. We prosecute all crimes at all levels, so you can imagine the size of our problem. The questions arising not only of the overcrowding problem and prosecuting, but also in this position we have to be aware of the right of the people confined in jails. So far society has not found other means of dealing with this problem, but until we find a way to deal with this problem, we have to certainly address it with the right amount of dollars to create a solution.

Commissioner CORRADA. Mr. Chairman, if I may clarify, we have in our corrections system in Puerto Rico close to 1,000 Federal pretrial detainees, which of course adds to the problem.

Second, may I point out in further pursuing the point of equal treatment of Puerto Rico as a State in this legislation, frequently fugitives from Puerto Rican prisons go to New York and frequently also—and other places on the U.S. mainland—and frequently also Puerto Ricans who are inmates in State prisons throughout the U.S. mainland go to the island as fugitives. We have to deal, in cooperation with the corresponding State and Federal authorities, constantly with these problems. So it would not be wise in that respect to place Puerto Rico on a set aside basis.

Let me point out, by the way, that it may very well be that we will not take up to the 3 percent set aside provided in the bill. I do not think, because our population is about 1.4 percent of the total national population, that it would get to the 3 percent set aside.

The problem is that it is a set aside which does not even guarantee that 3 percent, because the provision in the bill is that we will not receive more than 3 percent. So it conceivably could be 0.1 percent or 0.2 percent or whatever.

Senator MATHIAS. If it worked out that 3 percent could actually give you more than you would get as a State share.

Commissioner CORRADA. That is correct. But there is no guarantee we would get anything.

Senator MATHIAS. So you would rather be certain of the State allocation than the possibility of more than the uncertain.

Commissioner CORRADA. That is right. We want our fair share, not more or less, but to share equally with other jurisdictions in dealing with the problem where we are affected equally as other jurisdictions are.

Senator MATHIAS. Let me ask you this question. In Puerto Rico there are a number of military installations, some of them of great age, some of them even began to be constructed in the time of Carlo Quinto. Are there any that would be suitable for use as penal institutions today?

Commissioner CORRADA. There are those possibilities, although of course they have not been analyzed in connection with all other demands. One possibility that has been given some thought is Fort Allen, which used to be, of course, a military facility of the United States. It is still under the jurisdiction of the United States. That facility was to be transferred to Puerto Rico for use by the Puerto Rican National Guard, but the U.S. Department of Justice asked for the collaboration of the Governor of Puerto Rico in utilizing those facilities to place there on a temporary basis 800 Haitian aliens who are waiting there for the disposition of their cases as to

whether they should be excluded or admitted as refugees. There is a commitment that that facility should at least be utilized for 1 year for the purposes of housing Haitian refugees.

At the time that Fort Allen becomes again available, the question would have to be considered as to whether it might be used by the Puerto Rican National Guard, which was the use heretofore contemplated, or whether it might be utilized for purposes related to housing of inmates.

Senator MATHIAS. Anything out in the Roosevelt Roads area?

Commissioner CORRADA. Roosevelt Roads, of course, is a very active naval base still.

Senator MATHIAS. And there is nothing surplus there you are aware of?

Commissioner CORRADA. There is substantial activity of the Navy in the area.

Senator MATHIAS. Let me ask the Attorney General if he would reflect on this, and if he knows of any surplus property.

Mr. REICHARD. We have gone through that exercise.

Senator MATHIAS. So you can assure the committee that that is not a realistic possibility?

Mr. REICHARD. It is not a realistic possibility at this point.

Senator MATHIAS. One final question. In my own State of Maryland now we are going through a difficult exercise of closing schools because in effect we overbuilt during the period of the post-World War II baby boom, and we are now having to painfully select the neighborhoods that will see their schools closed. It has been suggested by some experts that we may be passing through a similar phase in prison populations; that there is a kind of balloon and that if we overbuild we will find that we have in effect wasted some of our scarce national resources.

Do you think that this is the case? Do you see this as a temporary phenomena, or do you think that the overcrowding will continue and perhaps get worse?

Mr. JIMENEZ NETTLESHIP. I will answer that question, Mr. Chairman. In Puerto Rico we have worked with other sentencing practices alternatives, as detoxification programs for drug abusers and alcohol abusers. Last year we enacted a bill, a determinant sentence bill, and we are expecting to have our overcrowding situation aggravated at least from 20 to 40 percent in an increase in the prison inmate population.

Senator MATHIAS. So you cannot comfort yourself with the idea that this is going to be a very temporary situation.

Mr. JIMENEZ NETTLESHIP. Yes.

Senator MATHIAS. Gentlemen, we thank you very much for being with us today and bringing the problems of Puerto Rico to us, and your suggestions will be given very careful consideration here.

Commissioner CORRADA. Thank you, Mr. Chairman. We appreciate your time and the opportunity of appearing here today.

[The prepared statements of Resident Commissioner Corrada and Mr. Jimenez Nettleship follow:]

PREPARED STATEMENT OF CONGRESSMAN BALTASAR CORRADA

MR. CORRADA. Mr. Chairman, Members of the Subcommittee, I appreciate the opportunity to appear before the Subcommittee on Criminal Law of the Senate Committee on the Judiciary to discuss the important role that the prompt enactment of S. 186 would play in our efforts to fight crime in the whole Nation, including Puerto Rico. I also appear here to seek an amendment to the bill that would provide State-like treatment to Puerto Rico thus enabling 3.2 million of American citizens there to benefit fully from the provisions of the "Criminal Justice Construction Reform Act".

Accompanying me today are the Hon. Héctor Reichard, Secretary of Justice of the Commonwealth of Puerto Rico and Mr. Charles Jiménez Netleship, Administrator of the Administration of Corrections of Puerto Rico. These two officials have joined efforts with me today to present to this Subcommittee a complete picture of the present situation in the correctional system of Puerto Rico.

Senator Robert Dole is to be highly commended for introducing S.186, legislation to help alleviate the severe strains that the alarming increase in violent crime in the Nation has placed on the existing correctional facilities of all the states. I fully support the objectives and concept of this legislation. The inadequate correctional facilities in Puerto Rico as well as those of many states have an urgent need for resources such as those that could become available if this bill is enacted. Unfortunately, the bill contains a set-aside provision limiting the amount of funds that could be spent in Puerto Rico, Guam, the Virgin Islands and other U.S. offshore territorial jurisdictions to three percent of total appropriations.

I oppose the differential treatment accorded to Puerto Rico under Section 202(a)(1) of this legislation which will severely handicap efforts to upgrade our criminal justice facilities.

It makes no sense to place U.S. citizens into a legislative formula on a "set-aside" basis under any circumstances. The very words imply treatment in a discriminatory manner. Further-

more, Puerto Rico has traditionally been accorded treatment as a state in legislation pertaining to crime, law enforcement, juvenile justice and corrections given the fact that we are, as American citizens, subject to federal jurisdiction as if we were a state in criminal matters, we have a United States District Court in Puerto Rico with similar functions as those in the 50 states, we have 3.2 million inhabitants which is a population higher than that of 25 states and being a U.S. domestic area there is constant and uninterrupted mobility between people in Puerto Rico and the U.S. mainland.

This is no time to begin a differential treatment of Puerto Rico in this vital area of law enforcement corrections.

As the Attorney General William French Smith recently pointed out in his statement before this Subcommittee and I quote "the truth is, however, that criminals are already straining the resources of states, where prisons, often old and decrepit are seriously overcrowded." The penal institutions in Puerto Rico very dramatically portray this situation, with two jails over one hundred years old and three other constructed on or before 1926, out of a total of seven district and regional jails. The Ponce District Jail was constructed in the year 1847, the Aguadilla District Jail in 1866. These two jails housed 328 and 143 inmates, respectively as of September 30, 1981.

The present penal population in the correctional institutions of Puerto Rico is four-thousand, three-hundred and eighty (4,380) inmates. The capacity of the correctional facilities of Puerto Rico, based on the application of the recognized standards which require 55 square feet of housing space per inmate plus 35 square feet of dayroom/program space per inmate, is only one-thousand seven hundred and ninety (1790) inmates. This amounts to an overcrowd of two thousand five hundred and ninety (2,590) inmates, almost 3/5 of the Island's actual penal population, system-wide.

The cost of constructing sufficient new bedspaces to provide current penal population with housing conforming to recognized standards is estimated to be \$134.7 million dollars. The aggregate construction costs to provide sufficient new bedspaces

to the current as well as the projected 1985 penal population with recognized standard - conforming housing is estimated at \$229.3 million dollars. This is exclusive of remodeling and reconstruction costs of existing bedspaces.

Prison overcrowding and wornout jails are not the only problems in the correctional facilities of Puerto Rico. There is a lack of proper sanitation, absence of health facilities or adequate medical or psychological services triple bunking of young adults and failure to protect pre-trial detainees from attack, as pointed out by the Hon. Juan M. Pérez Giménez, United States District Court Judge, in a civil rights case in which the entire corrections system of the Commonwealth of Puerto Rico was challenged as violating rights of prisoners and pre-trial detainees. A Preliminary Injunction was issued on September 5, 1980 in this class action suit, cited at 497 Fed. Sup. 140. In this case, the United States District Court exercised jurisdiction when confronted with the existing conditions of the correctional facilities which the presiding judge described as "barbaric by any legal standard."

The United States District Court's intervention in this case was not on any "set-aside" basis. The case was decided on the basis of the application, through statutory provisions, of the Constitution and the provision of the Eight Amendment which prohibits cruel and unusual punishment. These Constitutional protections apply to Puerto Ricans as American citizens and there is no basis to deny inmates in Puerto Rican jails the minimum standards of treatment that apply elsewhere in the Nation and no basis to deny the law abiding population of Puerto Rico the kind of correction system that may adequately protect them from the criminal elements in our society.

Nor did the Federal Court apply on an unequal basis federal standards for prisons when it recently issued twenty eight orders to make the Puerto Rico Administration of Corrections comply with upgrading of correctional facilities.

We want to comply with all these federal requirements and standards and as U.S. citizens are proud and willing to take up the responsibilities and duties that U. S. citizenship implies.

So it seems reasonable to ask that the fair share of the benefits under federal assistance programs - which enable us to comply with federal decisions - should apply to Puerto Rico.

As you know, there is not a Federal Detention Center in Puerto Rico at present. The cost of constructing one runs considerably high and to transport the prisoners to the mainland for housing and back to Puerto Rico for trial is very expensive as well as risky. Therefore, the Federal government houses the federal detainees in Puerto Rico prisons. Consequently there could very well be federal liability in a future federal-inmate civil rights action arising under the detrimental conditions existing in the Commonwealth correctional facilities.

Another major problem which could be faced by United States Marshals in housing the federal detainees, which calls for state-like treatment for Puerto Rico under this legislation, is the one mentioned by the Hon. William French Smith, Attorney General, during his statement before this Subcommittee. In his statement he said and I quote: "the United States Marshals Service must rely to a large degree on local jail facilities for the housing of federal detainees. Unfortunately, jails in a number of jurisdictions throughout the Nation are seriously overcrowded. As of result of this overcrowding, over 100 local detention facilities have placed ceilings on the number of federal detainees they will accept."

In FY 1979, there were 613 Federal detainees in Puerto Rico and 911 in FY 1980. These figures emphasize the possibility of what the Attorney General has pointed out becoming a reality in Puerto Rico. We are dealing with correctional facilities overwhelmed by the local criminal activity. Now more than ever Puerto Rico needs to fully participate in Federal corrections program for the benefit of the local government as well as the Federal Government which is making use of the local facilities.

In summary, there is a compelling need to undertake comprehensive improvements in our local correctional system which can hardly be achieved without federal financial assistance of the type envisioned by S. 186.

Nevertheless, I have not come before this Subcommittee asking for an increase in this bill's level of funding or an authorization to federal officials to grant Puerto Rico whatever funds it needs to upgrade its correctional system. Much less do I disregard the Nation's pledge of economic austerity and the need every state has of these funds.

All I am asking for is that Puerto Rico be restored to its usual treatment in the area of corrections enabling it to have access, as as state, to whatever funds are finally authorized on an equal basis of need and population.

The officials accompanying me, in their different capacities, are eminently qualified to answer any detailed questions you may have on the justice and correctional systems of Puerto Rico.

In sum, Mr. Chairman and Members of this Subcommittee, we forcefully urge you to consider "equal treatment" for Puerto Rico in the various provisions of S. 186 and to enact this legislation which is so important to the Nation as a whole.

PREPARED STATEMENT OF CHARLES JIMENEZ NETTLESHIP

Chairman Mathias and Honorable Members of the Committee:

On behalf of the Administration of Correction of the Commonwealth of Puerto Rico, I would like to express my appreciation for this opportunity to testify concerning the Criminal Justice Construction Reform Act, Bill S. 186, which is now pending before this Subcommittee. I will begin my presentation by reviewing briefly some of the important developments that have recently transpired in the field of corrections in Puerto Rico. A more complete summary of the history of corrections in Puerto Rico is contained in Exhibit "A", appended to this statement.

I.

The Evolution of Corrections in Puerto Rico

The Administration of Correction was created by the Law of the 22nd of July 1974, No. 116, which specifically

transferred responsibility for penal matters from the Commonwealth Department of Justice to a separate agency. At the time of enactment of that law, most convicted offenders and pre-trial detainees were housed either in the local jails which existed in each municipality, or in the five district jails located in the cities of Aguadilla, Arecibo, Humacao, Ponce and San Juan. Certain inmates were also incarcerated at the penal camps situated in the rural areas of Puerto Rico, and at the Rio Piedras State Penitentiary, a 217,000 square foot medium- and maximum-security institution built in 1926. Due to the age and small size of most of these facilities, and their consequent unsuitability for contemporary rehabilitative and treatment programs, it was determined to close the smaller municipal jails and to replace them with a modern network of strategically-situated regional institutions.

At the time of its inception in 1974, the Administration of Correction inherited a number of truly antiquated correctional facilities, some of which had been constructed during the period of Spanish colonial rule. For example, the district jail in Ponce was built by the Spanish in 1847, and the jail at Aguadilla was done in 1866. The prison that was in use in the San Juan region, commonly known as La Princesa, was built by the Spanish in 1808, and was so obsolete and unsuitable for correctional purposes that it was closed by Order of the Federal District Court in 1976. The two remaining district jails, those at Arecibo and Humacao, were constructed shortly after Puerto Rico was acquired as a U.S. possession, in 1906 and 1912 respectively.

II.

Construction of New Facilities

A. Bayamon Regional Detention Center

Based upon the decision to close the dilapidated municipal jails, the Administration recognized the need to construct new regional institutions. One such facility was constructed

in the City of Bayamon, near San Juan, at a cost of \$8.3 million. The facility was opened in October 1976, and was designed to house 640 pre-trial detainees, calculated according to an allocation of 35 square feet of space per inmate. However, due to the closing of La Princesa pursuant to the Federal District Court Order, it became necessary to accommodate a much larger number of inmates in that institution and for at least the past three years the population has consistently been in excess of 1,000 inmates. Within the past several months, there have at times been over 1,400 inmates housed at Bayamon, and the Administration has had to convert the classrooms at this institution into makeshift dormitories to accommodate this overflow of prisoners. Consequently, a curtailment has been made necessary in educational and vocational programming, and many of the inmates at Bayamon are idle for most of the day.

B. Guayama Regional Detention Center

Another modern facility, the Guayama Regional Detention Center, was opened in June 1977. That institution was designed to accommodate 240 inmates, but due to the persistent system-wide overcrowding problem, it also has been required to house a larger number of inmates.

C. State Penitentiary (Remodelling)

A major project was undertaken by the Administration of Correction between 1977 and 1980 to remodel the State Penitentiary at a cost of \$14.5 million. The capacity of the remodelled Penitentiary is 488 inmates. During the remodelling period, all inmates who had been housed at that facility had to be transferred to other institutions, with the exception of the 100 inmates staying at the intensive treatment unit annex. The State Penitentiary was re-opened in September 1980, and during the ensuing 14 months the inmates inflicted such substantial damage to the facility

that it recently became necessary once again to remove all inmates from the building in order to permit essential repairs and maintenance to be done.

III.

Federal Constitutional and Legal Issues Facing the Administration of Correction

For the past several years the Administration of Correction has been involved in Eighth Amendment conditions of confinement litigation in the Federal District Court for the District of Puerto Rico. Practically all areas of the correctional program have been challenged including living space, medical care, mental health services, classification procedures, protective custody, rehabilitation, and disciplinary procedures. On September 5, 1980 Federal District Judge Juan Manuel Perez-Gimenez issued a Preliminary Injunction in the case requiring, among other things, that the Administration immediately improve medical and mental health services, discontinue the use of the isolation cells that exist at many of the institutions, as an interim measure provide all inmates with at least 35 square feet of living space within 6 months of the date of the Order, and develop long-range plans for providing all inmates housed in dormitories with 55 square feet of living space and all inmates housed in individual cells with 70 square feet of space along with detailed plans for time out of cells. A copy of that Court decision is appended hereto as Exhibit "D". Subsequently, the Court heard evidence on the other issues raised by the inmates in their request for permanent injunctive relief, during a trial which lasted from November 1980 through March 1981. The Court has not yet issued a decision in that phase of the litigation, but a final disposition of the case is anticipated in the near future.

Exhibit "B", appended hereto, summarizes the extent of

overcrowding in our correctional system vis-a-vis the Court's interim 35 square foot Ordering Provision. The number of additional bedspaces which are immediately required just to comply with that interim emergency provision is 911. Turning to the long term standard mandated by the Federal Court in the Preliminary Injunction, the one requiring that we provide 55/70 square feet of living space per inmate, the present capacity of the correctional system of Puerto Rico is calculated to be approximately 2,332 inmates. ^{*/} The actual population of the system, as of September 30, 1981, was 4,380 inmates. ^{**/} Thus, the short-fall in system capacity is slightly over 2,000 inmates, and the existing system capacity will almost have to be doubled in order to provide the current population level with housing that conforms to the standards imposed in the Federal Court Order. Moreover, this situation may be expected to become worse as the full impact of Puerto Rico's new determinate sentencing law is manifested, and the inmate population level increases; the National Institute of Corrections has projected that our December 1985 inmate population level will be 6,200 inmates, taking into account the effect of determinate sentencing. In the face of these statistics, there is an obvious need for immediate and substantial physical plant expansion in order to bring the correctional system into compliance with the Federal Court Order.

The Legislature of Puerto Rico is aware of the need being experienced by the Administration of Correction, and despite the extremely limited resources available to the Commonwealth, a supplementary appropriation of \$11 million was approved last spring to enable the Administration to

^{*/} Source: U.S. Department of Justice, National Institute of Corrections, Technical Assistance Report, "Overcrowding in Puerto Rico Correctional Facilities," January 1981, at 35.

^{**/} Source: Administracion de Correccion, Informe Diario de Poblacion Penal, September 30, 1981.

begin some of the capital construction projects. In view of the magnitude of the financial commitment that will be necessary to enable the Administration of Correction to fully comply with the Federal constitutional standards as applied by the Federal District Court, it is essential that Puerto Rico have available to it all possible sources of Federal funding under a framework no less favorable than that applied to the States.

IV.

Current Permanent Improvement Needs In Puerto Rico

There is now a dramatic need for physical plant modernization and expansion in order to bring the correctional system of Puerto Rico into compliance with the Federal Court Order. The consultants who are preparing our statewide masterplan have recently advised that we must anticipate spending at least \$106 million to \$135 million in order to provide all inmates with housing that conforms to Federal Court-mandated standards. See Exhibit "C", appended hereto, which provides more detailed statistics concerning the Administration's permanent improvement needs. This does not include the cost of renovations to the existing structures, which will be mandatory if we are to be able to continue to use some of the older correctional facilities, nor does it include the cost of constructing facilities to train the additional personnel who will be needed to staff the new institutions, special program areas in which to provide anti-addiction services, or psycho-social treatment centers and shelter workshops which are needed to provide inmates with mental health services. The availability of increased Federal funding would also allow us to consider major renovations to La Princesa jail in Old San Juan, to convert that structure into office space for the Administration of Correction, enabling us to make productive use of a truly important historic landmark.

As I am sure the members of this Subcommittee are well aware, the cost of constructing new correctional facilities is extremely high. For example, the Administration of Correction is now in the process of beginning the construction of a new institution in the town of Zarzal, which will have the capacity to house 500 inmates and will cost \$26 million. The program areas and dayroom space at this institution have been judged as adequate by the Administration's criminal justice consultants, although the plan for this facility does not incorporate a number of the amenities that have been included in typical recently-constructed prisons on the more affluent U.S. mainland. A new regional institution is also being planned for the City of Arecibo which will serve the western part of Puerto Rico. It is projected that the per bedspace construction costs associated with that prison will be comparable to those projected for Zarzal, and will total approximately \$21 million.

Based upon the work the consultants have done thus far, it seems inevitable that a number of additional new correctional institutions will have to be constructed in the near future in order to comply with the Federal Court Order. Without substantial Federal funding, made available to Puerto Rico on the same basis as it is made available to the states, it will be extremely difficult for us to carry out our mandate of providing and operating a productive, functional, and constitutional correctional system.

V.

Observations Regarding the Criminal Justice Construction Reform Act

At this point I would like to comment on several particular features of Bill S. 186, as it reads at present. A principal concern of our agency vis-a-vis this Bill is that even though the Administration of Correction is subject to Federal constitutional standards, and is amenable to suit

in Federal District Court with respect to alleged constitutional violations--in the same manner as are correctional agencies in the states--we are treated differently than the states under the Bill's proposed funding provisions. Instead of being eligible to participate in the 85 percent of the appropriation that is allocated for distribution to the states based on population and criminal justice system activity, we are limited to receiving no more than the 3 percent "territorial set aside", which must be shared with Guam, American Samoa, the Virgin Islands, and the Pacific island territories.

In Federal District Court, we are being judged according to the same standards as those that apply in the other states. Throughout the current litigation, references continue to be made to Federal Court case law from U.S. mainland jurisdictions in which conditions of confinement lawsuits have previously been adjudicated. The Preliminary Injunction in our Federal Court case, a copy of which is attached herewith as Exhibit "D", refers at several points to the correctional standards developed by such organizations as the National Sheriffs Association and American Correctional Association. These are standards of national application, the development of which was funded in large part by grants from the Federal Government. In essence, the Federal Court has determined that the evaluation of our prison system should be done in the same manner that Federal Courts elsewhere in the country evaluate other state prison systems. We therefore believe that Puerto Rico should be allowed to participate in the appropriations that may be made available under this Bill on the same basis as all of the states.

One aspect of Bill S. 186 that we heartily endorse is the importance attached to the renovation of historic structures. As pointed out above, several of the district jails in Puerto Rico date from the Spanish colonial period,

and while they would require substantial rehabilitation in order to bring them up to current correctional standards, they do represent landmarks of significance to the history of Puerto Rico, and are worth preserving if at all feasible. In some cases it would almost certainly be more expensive to renovate these structures than to construct new correctional facilities. Therefore, the availability of Federal funds to finance such historic rehabilitation projects would greatly assist in our efforts to provide facilities that will meet the correctional needs of the 1980's and beyond, while preserving the historic structures that have been entrusted to us.

The basic prerequisite each jurisdiction must meet in order to qualify for funding under the Criminal Justice Construction Reform Act is to have a long-range statewide criminal justice masterplan. We, in Puerto Rico, are now in the process of having such a masterplan prepared with the assistance of the Chicago-based consulting firm of Moyer Associates Inc. We regard this feature of the Bill as a sound measure that will ensure the wise expenditure of all federal funds appropriated under the law. However, we must take exception to certain of the Bill's provisions which define the proper scope for such a masterplan. In particular, we are concerned with Sec. 203(a)(6) and (7), which read as follows:

[Each such Masterplan shall --]

* * * *

- (6) provide assurances that, in order to improve the operation of the criminal justice system within that State, projects assisted under this title will incorporate innovations and advanced techniques in the design of such facilities;
- (7) provide assurances that the personnel standards and programs of the institutions and facilities which will be assisted under this title will reflect advanced practices;

* * * *

Superficially, it might appear to be desirable to implement

"advanced" design techniques and "advanced" personnel and programming practices, but we are deeply concerned with the practical constraints that such requirements would impose upon the discretion of state and local correctional authorities to develop correctional programs that are suitable for local needs.

In the course of preparing our Masterplan for Corrections, we have had the opportunity to consider some of the so-called "advanced" techniques and practices set forth in such documents as the American Correctional Association's "Standards for Adult Correctional Institutions" and "Guidelines for the Development of Policies and Procedures -- Adult Correctional Institutions." While some of these measures represent constructive guidance and indeed will be incorporated in our final masterplan, many other standards contained in these documents appear to reflect the extreme left-wing viewpoint in the field of penology, which we consider to be inconsistent with the fundamental purposes of our correctional program, which in our system is a combination of three theories: confinement, rehabilitation and deterrence.

For example, the American Correctional Association's Physical Plant Standards for Adult Correctional Institutions require that all inmate housing areas, in existing as well as new institutions, offer "temperatures . . . appropriate to the summer and winter comfort zones," which is defined as "66 to 80 degrees Fahrenheit in the summer comfort zone, optimally 71 degrees, and 61 to 73 degrees Fahrenheit in the winter comfort zone, optimally 70 degrees." See ACA Standards 2-4130, 2-4131, 2-4132, 2-4135. As applied to Puerto Rico, these standards would oblige the Administration of Correction to install air conditioning throughout the housing areas of each of our penal institutions. While it would probably be desirable from the perspective of the comfort of the inmates to provide air conditioned housing, as long as the Government of Puerto

Rico does not install air conditioning free of charge in the homes of the law-abiding taxpayers of the Commonwealth, we could not, in good conscience, authorize the expenditure of public funds, whether Federal or local, for such a project.

As another example, the chapter of the ACA's "Guidelines for the Development of Policies and Procedures" dealing with inmate orientation proposes a four-day-long series of presentations by staff members from all departments and services of the institution, including audio-visual programs, that is to culminate in a "Final Session" at which coffee and pastries are served to the inmates, and questionnaires are distributed to enable the inmates to critique and evaluate the orientation program. While inmate orientation may have a role to play toward promoting effective institutional management, the content of that chapter from the ACA's Guidelines demonstrates how so-called "advanced practices" may prove to be grandiose manifestations of extreme socio-penal theories which undermine what local correctional authorities, as well as members of the public, regard as an appropriate means of expending the funds allocated for the correctional program.

We submit that members of the public, in Puerto Rico as well as the U.S. mainland, would not tolerate the provision of many of the amenities incorporated in the ACA standards to those who have committed crimes against society, when those amenities are not provided by the state to the citizens in the free community who have been victimized by their criminal conduct. As long as correctional authorities are answerable to the Federal Courts and to their respective state legislatures, we believe adequate safeguards exist to ensure the implementation of reasonable correctional standards, and the gradual introduction of "advanced" techniques and practices to the extent they are determined to be sound by local correctional authorities and are not inconsistent with prevailing public attitudes. Furthermore, the U.S. Supreme Court decision earlier this

year in the Rhodes v. Chapman case held that "the constitution does not mandate comfortable prisons," (emphasis added) and went on to make clear that the standards set by the ACA and similar organizations merely reflect those organizations' aspirations toward an ideal environment for long-term confinement and do not serve to define minimum acceptable institutional living conditions. _____ U.S. _____, 101 S.Ct. 2392, 2400 (1981). We believe it is essential to eliminate any possibility that this legislation might operate to supersede the Rhodes v. Chapman decision, by obliging state correctional authorities to accede to the extreme views of the minority that has traditionally had the loudest voice in defining "advanced practices" in the field of corrections, in order to qualify for desperately needed Federal funding.

Accordingly, the Administration of Correction strongly recommends that the Committee consider deleting paragraphs (6) and (7) from Sec. 203(a) of the Bill, as well as the related provisions set forth in Sec. 203(b)(2) and Sec. 205(a)(2), or alternatively, that those provisions be modified to ensure that the states will not be required, as a precondition to receiving funds under this law, to implement the more radical aspects of the ACA standards (and related guidelines) which are so far removed from the mainstream of American public opinion as to the appropriate use of tax dollars vis-a-vis the design, construction and operation of correctional institutions.

We would also like to propose a technical amendment to Sec. 102(5)(C), which defines "criminal justice" as including:

Activities of corrections, probation, or
parole authorities and related agencies
assisting in the rehabilitation,
supervision, and care of criminal offenders,
... [Emphasis added.]

It has long been recognized, by the courts, practitioners, and academics, that the basic functions of a correctional

system are: (1) deterrence, (2) confinement of criminal offenders, (3) rehabilitation, and (4) internal security. Pell v. Procunier, 417 U.S. 817, 822-23, 94 S.Ct. 2800, 41 L.Ed.2d 495 (1974); Ramos v. Lamm, 485 F. Supp. 122, 152, n.18 (D. Colo. 1979). See also Delgado, "Organically Induced Behavioral Change in Correctional Institutions: Release Decisions and the 'New Man' Phenomenon," 50 So. Cal. L. Rev. 215, 250-263 (1977), defining the four justifications for criminal punishment as deterrence, rehabilitation, retribution, and societal protection. In light of these views, which have come to constitute the dogma of this profession, we believe it would be more appropriate for the Bill's definition of the scope of the correctional mission to reflect all of the generally recognized functions of the correctional endeavor, and not only the "rehabilitation, supervision, and care of criminal offenders."

VI.

Conclusion

In summary, the Administration of Correction of the Commonwealth of Puerto Rico strongly endorses the principles of the Criminal Justice Construction Reform Act to provide much needed Federal financial assistance to enable the states to construct correctional facilities that comply with contemporary constitutional standards. The need for such financial assistance is particularly acute in Puerto Rico, in view of the limitations on our local treasury, and the requirements imposed by the Federal Court Order.

Our principal recommendations for revision of the Bill are to delete or modify the references to "advanced" techniques and practices, to guarantee that states will not be required, as a prerequisite to the receipt of Federal funding, to implement measures that are repugnant both to their correctional philosophies and to prevailing public opinion, and to replace

the three percent "territorial set aside" with a provision whereby Puerto Rico and the territories may participate in the appropriations under the Bill on the same basis as the states. Our position is essentially that if the Federal Constitutional requirements are applied to Puerto Ricans in the correctional field as U.S. citizens, then the Commonwealth of Puerto Rico is entitled to be treated on the same basis as the states for purposes of this legislation.

On behalf of the Administration of Correction of the Commonwealth of Puerto Rico, I would like to thank the Subcommittee for this opportunity to present our views, and to offer the Administration's assistance to work with the Committee as it proceeds to give further consideration to this important legislation.

Exhibit A

HISTORY OF CORRECTIONS IN PUERTO RICO

1838

Conversion of La Princesa, a building constructed in Old San Juan by the Spanish in 1808, into a prison. This facility continued to be used as a penal institution until it was closed by Federal Court Order in 1976. Martinez Rodriguez v. Jimenez, 409 F. Supp. 582 (D.P.R. 1976).

1847

Ponce District Jail constructed by Spanish in the City of Ponce in Southern Puerto Rico. This facility is still in use, and as of September 30, 1981, housed 328 inmates. The dungeons at this institution were closed by Federal Court Order in September 1980, but they have since been remodelled into "renovated isolation cells" and are now ready to provide additional housing for inmates.

1866

Aguadilla District Jail built by Spanish in Western Puerto Rico. This institution is also still in use, and as of September 30, 1981 housed 143 inmates.

1906

American regime constructs Arecibo District Jail in North-western Puerto Rico. This prison housed 226 inmates, as of September 30, 1981.

1912

Construction of Humacao District Jail on the Eastern Coast of Puerto Rico, which on September 30, 1981 provided housing for 116 inmates.

1926

Construction of Rio Piedras State Penitentiary, in the Metropolitan San Juan area, a medium- and maximum-security prison that can accommodate 488 inmates in individual cells. This institution is being renovated and does not at present house any inmates.

1945

Cornerstone of corrections program consisted of a decentralized network of seventy-seven municipal jails, one located in every town of significance in Puerto Rico. These jails have subsequently been phased out, and only a few are still in operation.

1974

Enactment of the Law of the 22nd of July 1974, No. 116, creating the Administration of Correction as a discrete government agency, and transferring to it functions that had previously been the responsibility of the Commonwealth Department of Justice.

1976

Opening of Bayamon Regional Detention Center, near San Juan, a futuristic \$8.3 million correctional facility. The opening of this prison occurred at about the same time as the closing of La Princesa Jail in Old San Juan, pursuant to Federal Court Order.

1977

Opening of Guayama Regional Detention Center, another modern penal institution, designated to serve Southeastern Puerto Rico.

1977-1980

Renovation of the Rio Piedras State Penitentiary at a cost of \$14.5 million. This institution was re-opened in the Fall of 1980, but was recently closed again for additional renovations.

1980

Issuance of Preliminary Injunction in the case of Carlos Morales Feliciano v. Carlos Romero Barcelo, 497 F. Supp. 14 (D.P.R. 1980), requiring the Administration of Correction, inter alia, to provide all inmates with at least 35 square feet of living space by March 5, 1981, and to develop long range plans for providing all inmates housed in dormitories with 55 square feet of space and those housed in individual cells with 70 square feet of space together with detailed plans for time out of cells.

July 1981

Appointment of new Administrator of Correction, Lcdo. Charles Jimenez Nettleship, and award of contract to Moyer Associates Inc., justice system planning and architectural consultants,

to develop "Masterplan for Corrections" for the Commonwealth of Puerto Rico.

October 1981

Hearing in Federal District Court on Order to Show Cause regarding compliance with Preliminary Injunction of September 5, 1980, which resulted in a finding by the Court that the Administration was in substantial compliance with those provisions of the Order relating to mental health.

Exhibit B

EXTENT OF OVERCROWDING IN CORRECTIONAL
INSTITUTIONS OF PUERTO RICO AS OF SEPTEMBER 30, 1981

<u>Institution</u>	<u>Rated Capacity (at 35 square feet per inmate) 1/</u>	<u>Actual Population</u>	<u>Extent of Overcrowd- ing</u>
Aguadilla	121	143	22
Arecibo	174	226	52
Guayama	223	313	90
Bayamon	640	1,373	733
Vega Alta Womens' Prison	96	103	7
Stop 8 Detention Center for Federal Prisoners	79	86	7

The remaining 12 correctional institutions and the 3 halfway houses operated by the Administration were within their 35 square foot rated capacities as of September 30, 1981.

SUMMARY

Total Rated Capacity of the Six Overcrowded Institutions	1,333
Actual Penal Population Housed at Overcrowded Institutions	2,244
Extent of Immediate Need for Additional Bedspaces to Comply with Interim 35 square foot Provision of Federal Court Order	911

1/ The Federal District Court ordered, in September 1980, that as an interim measure all inmates be provided with at least 35 square feet of living space by March 5, 1981. The rated capacity of each institution, as indicated in this table, was determined by the Professional Engineering staff of the Administration of Correction.

Exhibit CSYNOPSIS OF PUERTO RICAN CORRECTIONAL SYSTEM
CAPACITY AND PHYSICAL PLANT EXPANSION NEEDSI. INMATE POPULATION DATA

Capacity of present
correctional system at 55
square feet of space per
inmate (Federal Court-
mandated standard)

2,332 ^{1/}

Capacity of system with
application of recognized
standards (55 square feet
of "housing" space per in-
mate plus 35 square feet of
dayroom/program space per
inmate)

1,790 ^{2/}

Actual penal population,
systemwide, as of
September 30, 1981

4,380 ^{3/}

Shortfall in System
Capacity ^{4/}

2,048 (based on
Court-mandated
minimum standard)

2,590 (based on
recognized standards)

II. PHYSICAL PLANT EXPANSION COSTS ^{5/}

- A. Cost of constructing sufficient new
bedspaces to provide current penal
population with Federal Court-mandated
55 square feet of space

\$106.5 million

- B. Cost of constructing sufficient new
bedspaces to provide current penal
population with housing conforming
to recognized standards

\$134.7 million

- C. Cost of constructing sufficient new
bedspaces to provide projected 1985
penal population with recognized
standard-conforming housing ^{6/}

\$229.3 million

^{1/} Source: U.S. Department of Justice, National Institute of
Corrections, Technical Assistance Report, "Overcrowding in
Puerto Rico Correctional Facilities," January 1981, at 35.

^{2/} Id. at 36.

^{3/} Source: Informe Diario de Poblacion Penal, September 30, 1981.

^{4/} These shortfall figures are based on present system capacity,
and do not take into account the likely increase in penal popula-
tion that will result from implementation of Puerto Rico's new
determinate sentencing law. The NIC Report, at page 39, projects
an inmate population level of 6,200 by December 1985 based upon
the effect of determinate sentencing, i.e., an increase of 1,820
inmates over the September 30, 1981 level.

^{5/} Based upon construction costs of \$52,000 per bedspace, the
actual cost presently being incurred in constructing the new
500-bed Zarzal institution. These figures do not reflect any
cost increases that may be expected due to inflation.

^{6/} Based upon NIC projection of December 1985 inmate popula-
tion level of 6,200. See note 4, supra.

Carlos Morales FELICIANO et
al., Plaintiffs,

v.

Carlos Romero BARCELO et
al., Defendants.

Civ. No. 79-4.

United States District Court,
D. Puerto Rico.

Jan. 3, 1979.

Action was brought challenging entire corrections system of Commonwealth of Puerto Rico as violating rights of prisoners and pretrial detainees. The District Court, Perez-Gimenez, J., held that: (1) evidence established that prison system was unitary one so that relief must be on system-wide basis, that unsatisfactory conditions dangerous to health and life existed throughout, that physical impositions upon inmates were dangerous to their health and safety, that health care was inadequate, that death haunted the prisons, and that emergency existed and irreparable harm would occur if immediate relief were not granted; (2) use of solitary confinement cells known as "calabozos" for housing persons voluntarily seeking protective custody, constituted arbitrary and cruel punishment; and (3) space provided in dormitories of prisons violated Constitution, when considered together with poor sanitary facilities, insufficient light and ventilation and lack of privacy, where there were about 20 square feet per prisoner in some prison areas and space was almost nonexistent in others.

Ordered accordingly.

1. Prisons ⇐ 17

In action involving alleged violations of rights of prisoners and pretrial detainees by Administration of Correction of Puerto Rico, evidence established that prison system was unitary one so that relief must be on system-wide basis, that unsatisfactory conditions dangerous to health and life existed throughout, that physical impositions

upon inmates were dangerous to their health and safety, that health care was inadequate, that death haunted the prisons, and that emergency existed and irreparable harm would occur if immediate relief were not granted. U.S.C.A.Const. Amends. 8, 14; 28 U.S.C.A. § 1343; 42 U.S.C.A. § 1983.

2. Prisons ⇐ 4(4)

Pretrial detainees are not prisoners and their restraint is justifiable under either the Fifth Amendment or the Fourteenth Amendment, provided it is not punishment or that conditions and restrictions imposed upon them do not otherwise violate the Constitution. U.S.C.A.Const. Amends. 5, 14.

3. Prisons ⇐ 4(4)

If restrictions or conditions of pretrial detention are arbitrary or purposeless in relation to maintenance of effective management of detention facility and to insure detainee's presence at trial, then court may infer that purpose of governmental action is punishment which may not constitutionally be inflicted upon detainees qua detainees. U.S.C.A.Const. Amends. 5, 14.

4. Prisons ⇐ 17

Overcrowding in prisons, lack of sanitation, absence of health facilities or adequate medical or psychological services, triple bunking of young adults and failure to protect pretrial detainees from attack constituted punishment for constitutional purposes, whether intended or not. U.S.C.A. Const. Amends. 5, 14.

5. Criminal Law ⇐ 1213

Eighth Amendment proscribes more than physically barbarous punishment and punishments which are incompatible with evolving standards of decency that mark progress of maturing society are repugnant to the Eighth Amendment. U.S.C.A.Const. Amend. 8.

6. Constitutional Law ⇐ 272(2)

Criminal Law ⇐ 1213

Deliberate indifference to serious medical needs of prison inmates constitutes un-

FELICIANO v. BARCELO

15

Cite as 497 F.Supp. 14 (1979)

necessary and wanton infliction of pain proscribed by Eighth and Fifth Amendments. U.S.C.A.Const. Amends. 5, 8.

7. Prisons ⇐17

Lack of medical program in prisons violated the Constitution. U.S.C.A.Const. Amends. 5, 8.

8. Prisons ⇐17

If solitary confinement involves neither intolerable isolation, nor inadequate food, heat, sanitation, lighting or bedding, and if confinement is short-termed and properly supervised with no lack of necessary medical attention, it offends no constitutional prohibition, but isolation is unconstitutional if there is inadequate sanitary conditions, if it is for long period of time without exercise and recreation, or if it threatens physical health of prisoners and interferes with medical attention. U.S.C.A.Const. Amends. 5, 8.

9. Prisons ⇐13(5)

Solitary confinement of young adults is unconstitutional. U.S.C.A.Const. Amends. 5, 8.

10. Criminal Law ⇐1213

Solitary confinement of psychiatric patients without supervision, without treatment and without medication is cruel and barbaric and unconstitutional. U.S.C.A.Const. Amends. 5, 8.

11. Criminal Law ⇐1213

Use of solitary confinement cells known as "calabozos" for housing persons voluntarily seeking protective custody, accompanied frequently with multiple persons per cell, lack of exercise, working toilets, drinking water and ventilation, unbearable heat, insufficient light, loss of work privileges and change in classification, constituted arbitrary and cruel punishment. U.S.C.A.Const. Amend. 8.

12. Criminal Law ⇐1213

"Calabozos" in Puerto Rico's prisons physically violated the Eighth Amendment proscriptions, where they were isolated from rest of prisons were attended irregularly, they contained insufficient space,

light and ventilation, they were overpoweringly destructive, and some were invitations to suicide; thus, with or without improvement, their continued use was unconstitutional. U.S.C.A.Const. Amends. 5, 8.

13. Criminal Law ⇐1213

Failure to hospitalize known mentally ill, when penal institution personnel knew they could not provide medical or psychiatric services constituted cruel and unusual punishment. U.S.C.A.Const. Amends. 5, 8.

14. Criminal Law ⇐1213

Overcrowding in prisons is not per se a violation of Eighth Amendment's prohibition against cruel and unusual punishment, and court is not bound by standard of "rated capacity" set by institution or any of organizations who have published standards for jails and prisons. U.S.C.A.Const. Amend. 8.

15. Prisons ⇐17

Space provided in dormitories of Puerto Rico prisons violated Constitution, when considered together with poor sanitary facilities, insufficient light and ventilation and lack of privacy, where there were about 20 square feet per prisoner in some prison areas and space was almost nonexistent in others. U.S.C.A.Const. Amends. 6, 8.

16. Criminal Law ⇐1213

Prison inmates who required special medications or special diets were being cruelly punished when such medication or special diets were withheld. U.S.C.A.Const. Amends. 5, 8.

17. Prisons ⇐4(1)

Inadequate resources can never justify depriving any prisoner of his constitutional rights. U.S.C.A.Const. Amends. 5, 8.

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Raúl Juan Escudero, Dept. of Justice, San Juan, P. R., Robert B. Donnin, Mayda Colón Tsaknis, Puerto Rico Federal Affairs Administration, Washington, D. C., for defendants.

OPINION AND ORDER

PEREZ-GIMENEZ, District Judge.

This action involves the alleged violations of the rights of prisoners and pre-trial detainees confined by the Administration of Correction of the Commonwealth of Puerto Rico. This type of case has grown as rivers grow deeper, wider and with a crescendo of speed and noise as they approach the oceans. This watercourse has not sprouted overnight, but has developed through the years from a small creek to its present size.¹ The instant action is as ambitious an action as we have seen reported anywhere. The entire correctional system of the Commonwealth is challenged on the ground that it

violates the due process rights, the equal protection rights, the rights of free association, and the right of access to the courts, as well as the right to be free or rid of cruel and unusual punishment.

Plaintiffs are all persons incarcerated under the custody of the Administrator of Correction and the defendants are the Governor of the Commonwealth of Puerto Rico, the Administrator of Correction and the present and some former members of the Parole Board of the Commonwealth of Puerto Rico. The action was filed in early 1979, but has a genealogy of other class actions previously filed and decided by this Court.²

1. Because of the nature of the Emergency and Extraordinary Relief requested by Plaintiffs, the Court was very restrained in allowing evidence on the record of past violations. Nevertheless, a trickle of testimony made its way into the record which evinces that the genesis of the present conditions of confinement has its roots in years gone by. The thrust of the evidence presented covered the years 1977-78, 1978-79, and 1979-80. Yet, even at least since 1960 the inmates at the State Penitentiary were receiving very deficient medical, psychiatric and therapeutic treatment; were complaining of receiving cruel and inhuman punishment; and throughout the system the inmates were living in subhuman conditions, which "... did not begin three years ago ...". (Cruz de Batista, T. 1834-35, 1837-38, 1879). See also footnote 2, *infra*.

2. *Efrain Montero Torres v. Rafael Hernández Colón*, Civil 75-828, filed by the inmates of La Pica, one of the minimum security camps, ended by stipulation and order requiring the Administrator of Correction to provide the Parole Board with psychological and other information that it was legislatively ordered to amass so that the Parole Board would be in position to act. In essence, the prisoners were being deprived of statutory due process and equal protection of the laws when parole eligible prisoners were denied consideration for parole when the Parole Board could not decide their case for lack of information.

The *Montero Torres* case was reopened by a pro se intervenor in 1977. *Roberto Morales Escudero* had his intervention transformed into a class action which attacked the gamut of parole procedures. The critical event in that case was a scheduled hearing to hold the former and present Governors, the present and former Administrators of Correction and the former and then current members of the Parole Board in contempt for violation of the Order

entered in the *Montero Torres* case. As the then Magistrate, the Court acted as mediator of an eight-day settlement conference that ended in another stipulation and order that was detailed as to each step and requirement of the parole deciding process. Substantial fees were awarded court-appointed counsel who, with one addition, are the same corps of attorneys representing plaintiffs in this case.

The *Morales Escudero* order was followed by another class-action intervention, that of *Juan Serrano Martínez*, which also ended by stipulation and order, refining the procedures set down in the *Morales Escudero* order of October 1, 1977, and requiring specific standardization of action by the prison authorities in classification and treatment of prisoners for parole purposes. This was followed by yet another action to hold named defendants in contempt for failure to comply with orders of this Court, the intervention of *Pedro Jiménez Alvarado*. That action was tried and a fine assessed if compliance were not made by a date certain.

Another class action by federal prisoners claiming that their Eighth Amendment Rights were violated by their conditions of confinement in the now extinct "La Princesa" was settled by the federal authorities removing pre-trial detainees and prisoners to the State Penitentiary. But then the state prisoners brought suit and a trial was had, and that particular institution was ordered closed. *Martínez Rodríguez v. Jiménez*, 409 F.Supp. 582 (D.P.R., 1976), affirmed on petition for a stay order, 537 F.2d 1 (1 Cir., 1976). The State Penitentiary then was voluntarily closed for repairs and remodeling after successive suits claiming intolerable conditions of confinement, first by federal inmates and then by Commonwealth prisoners. The federal prisoners successfully closed Bayamón Regional Institution insofar as they only were concerned, and the federal female prisoners have had their lot improved at

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After nearly a year and a half of extensive discovery, most of which was bitterly contested, the plaintiffs procured orders to distribute questionnaires, to have experts visit selected institutions and to take both motion pictures and still photographs of the institutions. The picture taking was governed by stringent regulations to prevent any possibility of either public disclosure or revelation of prison security. With the pictures and reports of the experts, the plaintiffs moved for a Preliminary Injunction and for Emergency, Provisional and Extraordinary Relief. That motion was accompanied by affidavits from five experts,³ the qualifications of whom were uncontested; portions of the depositions of the Administrator of Correction; and, copies of various Standards or Draft Standards of national organizations or governments.⁴

Convinced that a prima facie showing had been made in relation to basic health and custodial care, this Court issued an Order to Show Cause on May 9, 1980, directing the defendants to file, if they so desired, a response to the Motion for Preliminary Injunction not later than May 21, 1980, and that the hearing on the Show Cause Order commence on May 27, 1980. The plaintiffs requested emergency relief in nine designated areas:

1. To close the "calabozos" or dungeons to human occupation;
2. To transfer all known psychotics or other definable mentally ill inmates out of the prison system into mental hospitals or other institutions designed to treat such persons;
3. To screen all incoming inmates, whether convicted persons or pretrial de-

the Vega Alta Industrial School for Women. Both these institutions still house local prisoners.

All of these later cases concerning conditions of confinement have ended with the plaintiff prevailing by last minute settlement stipulation. The present action seeks for the first time island-wide equitable and injunctive relief for ten separate claims for relief, including conditions of confinement. It also seeks damages for individual intervening prisoners whose particular rights are alleged to have been violated.

tainees, to separate the psychotics for removal;

4. To screen the entire prison population for contagious, infectious, respiratory and venereal diseases and for such other physical conditions such as epilepsy, diabetes, blood pressure, liver disorders, and to continue to do such screening of every inmate admitted to the system in the future;

5. To reduce the population of every institution under the authority of the Administrator of Correction to a number compatible with minimum physical and mental health standards;

6. To provide each inmate with a personal living space of at least seventy (70) square feet and at least five (5) hours a day outside of such confinement;

7. To provide each inmate who requires, a special diet for medical or religious reasons, with such a diet;

8. To provide (or to advise the Court what was needed to so provide) with staff, facilities and supplies necessary to deliver adequate health care and adequate sanitation to all the institutions operated by or under the authority of the Administration of Correction;

9. Provide a psychological and psychiatric screening of all persons confined in the institutions.

The Court heard a total of 45 witnesses, carefully scrutinized all the exhibits admitted into evidence, including the four hundred (400) photographs, the selected medical and psychological records, the motion pictures of each of the closed institutions and of Sabana Hoyos Prison Camp, and all the papers filed by the attorneys for the parties. In addition to the thousands of pages

3. Four of the five experts testified during the hearing and their testimony will be properly identified below.

4. The Draft Standards of the Federal Department of Justice and the American Medical Association Standards for Jails. Allusion has been made by various witnesses to other standards and the American Correctional Standards and American Bar Association Standards have also been checked by the Court.

of documentary evidence, the Court has re-read the transcript of proceedings of nearly 3,000 pages and all of the cases cited by the parties. The Court cannot delay any further this ruling.

The Administration of Correction of the Commonwealth of Puerto Rico is an integrated system structured by statute to find effective ways of providing individualized treatment to foster rehabilitation. 4 L.P.R.A. 1111, 1112⁵ The legislature of Puerto Rico recognized its obligation of providing adequate medical care and hospital services. 4 L.P.R.A. 1112(f). Rehabilitation and humanitarian treatment is mandated not only in the organizing statute, 4 L.P.R.A. 1111-1125, inclusive, but in a number of the provisions of the Constitution of Puerto Rico. Article II, Section 1; Article II, Section 7; Article II, Section 11; Article II, Section 12; and Article VI, Section 19.

Because the Court finds that the defendants have so blatantly violated the federal Constitution's interdiction against cruel and unusual punishment, it becomes unnecessary to pass upon the plaintiffs' various claims of denials of due process, of statutory due process, or of equal protection of the laws. The importance of these statutes heretofore mentioned is that they negate any local or state justification or mitigating circumstances. Puerto Rico, by its laws, recognizes its duty and obligations to its prisoners and pre-trial detainees.⁶ The statutory obligations imposed upon the executives of the local government are more exacting than the reported decisions on the minimum quality of treatment required by the Eighth Amendment. There is no justification for the cruel and brutalizing conditions and treatment that the penal and pre-trial populations of Puerto Rico's prisons are compelled to endure. What has been shown the Court might be incredible to a naive person who accepted the presumption that legal duties are followed were it not for the fact that all these horrors have been

preserved on film and frequently, in the records or lack of records of the several institutions.

Psychotic mad men are kept for weeks and months, (some pre-trial detainees) caged like animals, without clothes, without toilet facilities, without medicines, forced to eat with their hands and in most cases without ever having been seen by a doctor. Others, presumably sane, seeking asylum from threats of death or serious injury in the general penal population, lose all their privileges, all programs for possible rehabilitation, all chance for parole, all recreation, while they are locked in dungeons called "calabozos".

Prisoners and pre-trial detainees die from lack of medical treatment. Epileptics inflict upon themselves or suffer injuries which are too often fatal. Suicides are alarmingly frequent, but not so staggering to the mind as the number of violent deaths that the Court has reviewed. Raw sewage runs in dormitories and kitchens; toilets in all closed institutions do not work; prescriptions do not get filled; bed and mattresses are not provided; nor, for that matter is soap, toothpaste or toothbrushes, or sufficient toilet paper. Food has to be destroyed everywhere because it has been contaminated by rats or other vermin. Usually, people cannot see a doctor unless the prison guards acquiesce. They cannot be sent to a hospital if ordered by a physician unless there are enough prison guards available. There is no screening of incoming inmates and apart from check-ups made every six months by federal authorities for venereal disease, many prisoners never see a physician or are they given a medical examination. The only psychiatric screening that the overwhelming number of inmates receive is the untrained subjective evaluation of the prison guard. Overcrowding, the basic evil of each closed institution, is so intense that in some areas, such as the "Q" or quarantine section of the Bayamón

confinement. They are guaranteed the provision of life's basic needs for the period of their incarceration. *Bowring v. Godwin*, 551 F.2d 44 (4 Cir., 1977).

5. Law 116 of July 22, 1974.

6. The right of convicted persons to humane treatment is not eschewed by reason of their

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Regional Institution, where pre-trial detainees constitute the overwhelming majority, the inmate may have no more than fifteen (15) square feet of living space.

This evidence presented by the plaintiffs was not controverted. Defendants and their experts admitted all these shortcomings, as did the witnesses who were subpoenaed from the Administration of Correction. An emergency exists. The fundamental Constitutional guarantees of these prisoners have been and are being violated daily. The Court cannot, in view of the evidence, and the fact that half-hearted attempts to correct anything have only been made at the eleventh hour, most of them during the hearing, stay its hand or defer to the local authorities.⁷ The Court accepts its jurisdiction and its responsibility. An injunction shall issue.

Findings of Fact

1. The Administration of Correction is a governmental agency that operates all the institutions where pre-trial detainees are kept and convicted persons are housed. It is an integrated agency.

2. There are nineteen (19) institutions in all, ten (10) of them designated as closed institutions: Aguadilla, Arecibo, Ponce, Guayama, Bayamón, Humacao, Vega Alta

7. The Court is aware that substantial deference to prison officials is required. *Bell v. Wolfish*, 441 U.S. 520, 99 S.Ct. 1861, 60 L.Ed.2d 447 (1979); *Procunier v. Martinez*, 416 U.S. 396, 94 S.Ct. 1800, 40 L.Ed.2d 224 (1974); *Jones v. North Carolina Prisoners' Labor Union, Inc.*, 433 U.S. 119, 97 S.Ct. 2532, 53 L.Ed.2d 629 (1977). But this policy cannot interfere with the duty to protect constitutional rights. *Procunier v. Martinez*, *supra*; *Cruz v. Beto*, 405 U.S. 319, 92 S.Ct. 1079, 31 L.Ed.2d 263 (1972). Government entities have no discretion to violate the Constitution. *Owen v. City of Independence, Missouri*, 445 U.S. 622, 100 S.Ct. 1396, 63 L.Ed.2d 673 (1980). Once a court finds that an Eighth Amendment violation exists, it is obligated to remedy the situation. *Estelle v. Gamble*, 429 U.S. 97, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976); *Battle v. Anderson*, 564 F.2d 388, 392-393 (10 Cir., 1977); *Gregg v. Georgia*, 428 U.S. 153, 96 S.Ct. 2909, 49 L.Ed.2d 859 (1976); *Smith v. Sullivan*, 611 F.2d 1039, 1044 (5 Cir., 1980); *Hutto v. Finney*, 437 U.S. 678, 98 S.Ct. 2565, 57 L.Ed.2d 522 (1978); *Ramos v. Lamm*, 485 F.Supp. 122 (D.Colo., 1979).

Industrial School for Women, Miramar Young Adults Institution, the Intensive Treatment Unit at Río Piedras, and the San Juan Municipal Jail.⁸

The Intensive Treatment Unit at Río Piedras presently houses prisoners who are almost all classified as maximum custody prisoners. They are kept in individual cells and although there have been visits by experts, and testimony about conditions, the situation there is not comparable to the situation at the other closed institutions. Likewise, the testimony concerning the San Juan Municipal Jail has been so meager that no specific findings will be made concerning that institution.⁹

3. Each of the other closed institutions has a budget for food, medicines, linens, supplies, and said budget is administered by the superintendent of the respective institution. The distribution of medicines, the transfer of inmates and the supervision of medicines, repairs and other functions are all assumed by the central office, which also coordinates all medical services and prepares contracts with individual physicians.

The bases for the following findings are principally the motion pictures and still photographs that the Court examined and the testimony of the several superintend-

8. Testimony concerning the first eight of these institutions will be reviewed in these Findings of Fact. The Court compelled the parties to present evidence concerning conditions in the several institutions separately, in case certain remedies were to be ordered against specific institutions, or, in the case the Court were to find that the system was not an integrated one.

9. The State Penitentiary at Río Piedras has been shut down for repairs during the pendency of this lawsuit. The defendants' witnesses have referred to the reopening of that institution as if that opening would magically eliminate all the violations and solve all the problems of the penal system. The State Penitentiary will reopen on September 3, 1980, but the Court can make no findings as to how much that reopening will alleviate any of the problems in the other closed institutions. As of the date of the hearing ended, there was no evidence as to what kind of prisoners would be housed in the reopened facilities.

ents. Whenever the testimony of an expert is used as a basis for a finding, the name of the expert and the transcript reference will be given.

4. The Aguadilla Regional Jail is so old that its date of construction is unknown, but it was probably built before the turn of the century. Except for female prisoners, it houses pretrial detainees, young adult offenders and convicted criminals of every custodial classification. At one time, this institution only had 90 beds, which appears to be too many for the interior space. About one year ago, its "rated capacity" was raised by the Administration of Correction to 125 inmates. At the time that rating was made by the central office of the Administration, there were already 148 beds occupied. On June 4, 1980, 182 inmates were housed at Aguadilla, and there have been on occasion as many as 215 inmates.

5. This overcrowding has made it impossible for the superintendent to put prisoners to work who are entitled to reduce their sentences by productive labor because there is insufficient space. The space restriction makes use of the only available recreation area, the inner patio of less than 848 square feet, unavailable for exercise or recreation until after 4:00 P.M. To accommodate all the inmates, the space is used on a rotation basis so that young adult offenders, for example, are able to exercise once a week.

6. Overcrowding at Aguadilla is, in part, a contributing cause for the occasional outbreaks of scabies and other skin infections. Screens, which are vitally needed to keep out flies, have not been installed because they would cut off the circulation of air. Even though there are insufficient beds, prisoners who sleep on the floor usually sleep on mattresses, but sometimes, there are insufficient mattresses and then inmates have to sleep either doubled or on the floor without mattresses.

7. The "calabozos" or dungeons or isolation cells, are primitive; they have no windows and as recently as a year ago, they had no toilet or wash basin. They became somewhat more liveable after the deposi-

tion of the superintendent had been taken. Two persons have recently died in the "calabozos" in Aguadilla, both of them pre-trial detainees. Both were placed there because they appeared mentally ill. One was a known alcoholic; the other was an unknown epileptic. Both died without receiving adequate medical attention and there was not even a medical file for the epileptic.

8. The "calabozos" have been used in Aguadilla only to house "psychotics" (as determined by the penal guards) or persons who seek asylum from physical harm in the general population of the prison.

9. There is another dormitory ward in Aguadilla where mentally ill, only, are kept. There are no psychiatric or medical facilities to tend to them; there is no psychiatrist who visits the institution. The medical care program in Aguadilla consists of a doctor who attends a total of six hours per week over a five-day period and earns \$15.00 per hour. There is no full-time doctor, dentist, pharmacist or nurse, although a nurse was retained between the time of the superintendent's testimony and the testimony of the defendants' expert. There is no pharmacy, but there are medicines purchased with a total current annual budget of \$750.00. There is no preventive medicine or dental program; no regular physical check-up; no vaccination program and no obligation on the part of the contract physician to attend to the emergencies. The medical files are inadequate; they have no regular entries; no memoranda from the contract physician; no sick call entries and no reports of physical examinations. New medical records for in-coming inmates are being made up by the superintendent at home.

10. There is in Aguadilla, however, a citizens' committee which provides medicines to inmates when needed, which helps with emergency medical problems and otherwise assists the superintendent whenever he calls up its members. In fact, the superintendent does not believe he could do without the committee. The superintendent has had contact with the coordinator of medical services from the central office of the Ad-

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ministration of Correction, at most, on an average of once a year.

11. The experts were unanimous in praising the efforts made by the officials at Aguadilla to keep the place clean. But, only the defendants' expert felt that the use of the citizens' committee was a healthy sign. The Court finds that the Commonwealth cannot avoid its obligations in providing basic health services by reliance upon volunteer services.

12. The psychiatric treatment or lack of it, is disgraceful. On the date that the plaintiffs' psychiatric expert, Dr. Frank Rundle, visited Aguadilla, there were 205 inmates. (Rundle, T. 234). More than half of the persons in the dormitory for the mentally disturbed had to sleep on the floor on mattresses. (Rundle, T. 235). That dormitory had less than fifteen (15) square feet living space per person. (Rundle, T. 235). One person in "calabozo" was diagnosed as having organic brain syndrome (Rundle, T. 236); another in "calabozo" was there because he was allegedly mentally ill, but there was no medical history and no physical examination record. There were also no reports of alleged treatment at mental health clinics in Aguadilla, or at the Mayaguez Regional Hospital. (Rundle, T. 237-238).

13. The medicines were improperly organized. (King, T. 675). A recent epidemic of skin rashes had occurred. (King, T. 676). The sanitation facilities were not only broken or improper, there were an insufficient number for the persons incarcerated. (King, T. 677). The medical treatment and the medical record keeping was completely inadequate. (King, T. 678-679). The heat in Aguadilla is unbearable and that, plus the lack of facilities and the overcrowding, makes inevitable that deterioration is the only effect for the mentally ill inmates. (Díaz-Royo, T. 1696).

14. The conditions of overcrowding and lack of facilities were not contested by the defendants' expert. (Hastings, T. 2651-2652). The superintendent himself was of the opinion that the mentally ill should be out of "calabozos" and out of the prison

into a psychiatric hospital. (T. 1073-1074). He sees no need for "calabozos" at all. (T. 1073).

15. The Arecibo District Jail is 75 years old and houses both pre-trial and convicted inmates. Although the "rated capacity" is 220 inmates, that number has been constantly exceeded for the past three years. Some inmates sleep without beds, and articles of personal hygiene are not supplied. There are no facilities at the institution for psychiatric or dental care or X-rays. There is no laboratory or pharmacy or pharmacist, but there is a \$700.00 budgetary allowance for medicines.

16. Medical services are provided by a doctor who comes five hours a week. There is no provision for medical assistance on week-ends. The medical records are poorly kept, and there is no effort to take physical histories, make or record physical examinations, nor are the results of TB screening or sick-call notes placed in the individual charts.

17. The "calabozos" at Arecibo are like cages with bars on the top. Suicides have occurred there. There is at least one case of a man being housed in a "calabozo" for more than one year. Individual "calabozos" are frequently used for two or more persons at a time. All severely mentally ill are placed in "calabozos" in Arecibo.

18. Like the other institutions, there is no hot water in the dormitory areas. Adult and young offenders are frequently housed together and there have been at least three inmate deaths during the past year, and in none of the cases could it be said that adequate medical treatment was given.

19. There is no privacy at sick calls. (King, T. 649). The organization of medicines is haphazard and many medicines are kept beyond their expiration date. (King, T. 649). Medical records are so poorly organized that charts concerning one inmate may be found inside the files of another man. (King, T. 649-651). There is no first aid kit, no laboratory tests, no emergency equipment at all. (King, T. 651-653). There are no charts for nine of the ten

psychotics that were in "calabozos". (King, T. 655). The medical records are totally inadequate. (Hastings, T. 2784).

20. The persons in "calabozo" are markedly agitated and disoriented. (King, T. 655). The "calabozos" are contraindicated for potential suicides. Because of the way the "calabozos" are constructed, it is easy for a person to hang himself. (Hastings, T. 2786).

21. The stench from the overcrowding throughout the institution is omnipresent. (Díaz-Royo, T. 1679).

22. The Ponce Regional Institution was built in 1849. Young adults, pretrial detainees and all custody classifications for convicted prisoners are housed at Ponce. Occasionally, women pre-trial detainees are housed there as well. The superintendent had no idea of the capacity (but Dr. Hastings was advised that the "capacity" was 250). That "rating" was not made by any standard acceptable to the American Correctional Association. (Hastings, T. 2789). There were on the date of Dr. Hastings' visit, 404 inmates. (Hastings, T. 2789). The number of toilets, showers and wash basins are totally inadequate. The institution is horribly overcrowded. People are sleeping on the floor everywhere. The budget at Ponce for repairs was less in 1979/80 than it was in 1978/79.

23. The medical services at Ponce are unacceptable. There is no record of sick call notes, no history or physical examinations. (Hastings, T. 2626). There are not even any records of physical examinations for inmates who have been hospitalized. (King, T. 670). There were no records for psychiatric inmates, even those in "calabozos". (Rundle, T. 222). In the hospital area inside the institution, there is a desperate need for disinfectants, soap and toilet paper. (Rundle, T. 344). The hospital area is a fire trap. (King, T. 670).

24. The "calabozos" are small; they have no windows, no beds, no wash basin, no showers and no drinking water. They are only about 3 feet wide and are 10 to 12 feet deep. Toilets have been placed in some of them during the hearing or slightly be-

fore the hearing commenced. Some of those toilets are not connected to the plumbing system. As many as three naked men have been placed in a single dungeon. Most of the people placed in "calabozos" in Ponce are mental cases and at least one man had been in "calabozo" for more than two years.

25. The "calabozos" are filthy and they stink. (Rundle, T. 216-217). One man was apparently in "calabozo" even though his criminal case had been dismissed in 1978. (Rundle, T. 219-220). There is no access to psychiatric services. (Hastings, T. 2627). On the day of Dr. Hastings' visit, there were 14 persons confined in six "calabozos"; two of which had no toilets. (Hastings, T. 2790). The "calabozos" in Ponce are extremely dark and depressing. (Hastings, T. 2792).

26. The hospital area in the prison has been patched with tin cans to prevent rats from coming through the floor. (Díaz-Royo, T. 1690). The medical records are not even dated and no medical record was found in Ponce that was complete. (King, T. 672).

27. The sanitation is horrible. The dormitories are overcrowded and gloomy; the bathrooms are dirty with no working toilets and showers. The kitchen floor and equipment is broken and unsatisfactory, which constitutes a public health hazard. It also contains an open sewer. (Rundle, T. 354). There are no recreation areas in Ponce that are adequate (Rundle, T. 224), and young adults that were found by Dr. Díaz-Royo to be filled with rage (Díaz-Royo, T. 1690), were no longer in the institution at the time of Dr. Hastings' visit. The overcrowding is so bad that there are insufficient beds, mattresses and sheets, and people have died for lack of medical attention. (Hastings, T. 2793).

28. The "rated capacity" for Guayama Regional Institution is 240 persons and from 349 to 388 were confined on various dates between April and June, 1980. Guayama is a new institution and has been in use for less than five years. The prisoners

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from the North part are separated from the prisoners from the South part of Puerto Rico for security reasons.

29. There are no psychiatric services available at the prison and "calabozos" at Guayama, which are similar to those used at Bayamón, are for mental cases and for those seeking asylum. The solid steel doors on the "calabozos" had to be detrimental to the psychotics and non-psychotics housed therein. (Rundle, T. 230).

30. To get on sick call, a prisoner needs the approval of his penal guard, and it is conceded that some sick people get no medical attention. There is a contract physician who is supposed to come to the institution ten hours a week. The sick call schedule, however, varies. There was no dentist at Guayama at the time of the hearing, but there is equipment available.

31. The psychotics, most of whom were in "calabozos", were receiving no psychiatric attention, no medications and no medical treatment of any kind; nor were health records kept. (Hastings, T. 2803).

32. The sanitation, for a new institution, is bad. The bathrooms are covered with water; they are dirty and smelly and the toilet facilities frequently break down. The plumbing fixtures are frequently not functioning. The noise level for the pre-trial detainees is intolerable. (King, T. 675). The films and photographs that the Court saw for Guayama are depressing when one considers that this institution is less than five years old.

33. The Humacao Regional Institution was constructed in 1914 in wood and it has been replaced by concrete throughout. The "rated capacity" is 150, but that number results from a Superior Court Order limiting the institution to no more than 150. It has had as many as 190, and on the days to which testimony is relevant herein, it has always exceeded the 150 number. At 150 inmates, including pre-trial detainees, the average space per inmate for the institution is 23 square feet, but for individual dormitories that number may be less. The plumbing and sanitation is bad; there is no hot water; some beds are broken and a

large amount of food has had to be destroyed because of rats and other vermin.

34. The medical care at Humacao is provided by a contract physician who attends six hours, approximately three times a week and a nurse who works full time during the day. The physician only runs a sick call; no physical examinations are given; there is no preventive dental care; there is no psychiatric service provided; there is no one trained in emergency procedures. (Hastings, T. 2636). There is no organized system for handling medications, many of which are kept beyond their expiration date, and there is not even any record kept of medication administered. (Hastings, T. 2637). The medical records are poor (Hastings, T. 2636) and the food handlers do not have current certificates. (Hastings, T. 2639). The refrigeration does not work (King, T. 699) and no proper medical record keeping is maintained. (Hastings, T. 2641; King, T. 699). The inmates frequently have to purchase their own medications. (King, T. 700).

35. The "calabozos" are constructed as are the "calabozos" in Arecibo; that is, like cages with bars on tops. They have no beds, nor are all of the inmates in them given mattresses. The "calabozos" are hardly ever used for disciplinary matters and they are only used for psychiatric cases or for isolation of sick people and/or protective custody. There have been two suicides in "calabozo"; one during the pendency of these proceedings. The mental case that is presently in "calabozo" has never been examined by a psychiatrist and the only person who has written in his medical record is the nurse.

36. There is no provision in this institution for special diets. (Hastings, T. 2819).

37. The institution cannot physically function with so many people. The kitchen floor is cracked, hot water does not exist even for dishes; toilets do not work; there is exposed wiring in the dormitories; there is no fire extinguisher; (King, T. 702); and there is poor ventilation. (Hastings, T. 2639).

38. A cholestomy patient was kept there without having been seen by a doctor and without having replacements of his cholestomy bags. Were it not for the visits of plaintiffs' experts, his health would seriously be impaired. (King, T. 700). The recent suicide was a pretrial detainee sent to "calabozo" because he was to be isolated because of venereal disease. (Hastings, T. 2817-2819).

39. Like Aguadilla and almost every other institution, there are insufficient penal guards. The ration of penal guards to inmate may be as low as 1:18 or 1:20 per shift. This makes it difficult to properly protect the prisoners. There have been 13 attacks, including one stabbing death at Humacao since July 1979. The lack of guards also makes it difficult if not impossible for inmates who have medical treatment pending outside the institution to keep their appointments. (Hastings, T. 2816).

40. Miramar Home for Young Adults is in such a run down condition that the defendants' expert testified that "I would demolish it if I could". (Hastings, T. 2775). Its "rated capacity" is 200 persons, but the population varied, according to the witnesses, from 267 to 278. Although meant to house young adults only, there were adults there. (King, T. 661).

41. There are no maximum security prisoners at Miramar. The "calabozos", which were in a completely isolated area of the building and which may be dangerous for confinement of healthy people and should never be used for persons who have been confined there in the past such as young diabetics, (King, T. 664), were closed. According to the superintendent, he has no intention of reopening them even though two of them are presently under repairs.

42. The rest of the institution is run down. The sanitation conditions in the kitchen and throughout, are bad, but the cleaning procedures are themselves unsanitary. The kitchen is unclean and uncleanable. (Hastings, T. 2616). The floor is cracked, rodents and vermin come through it and the garbage storage is inadequate and uncovered, creating an invitation to

flies and the windows are without screens. (Hastings, T. 2617). In the dormitories, the overcrowding is bad, but made worse by the inmate distribution. (Díaz-Royo, T. 1684). In some dormitories the urinals empty into the showers and the lack of cleanliness is so omnipresent that cockroaches are in the medicine chest. (King, T. 661).

43. At Miramar, a contract physician comes to manage a sick call five times a week. The admission to the sick call is via the permission of the prison guards. Most records show no physical examinations; there are no psychological or psychiatric screening procedures and the record keeping is poor and the records are incomplete. Many of the drugs have expired, and the logbook containing the names of the persons who are to receive medications does not match the labels on the bottles or medications of the persons for whom they are intended. (Hastings, T. 2619). The dental equipment appears not to have been used for a long period of time, and such little emergency equipment that is present, like oxygen, cannot be used because there is no wrench to open the cartridges. (King, T. 662). The records of those persons who were thought to be mentally ill were either non-existent or so sketchy as to be inadequate for any reasonable purpose in terms of an evaluation establishing the diagnosis or any reasonable plan of treatment. (Rundle, T. 207-208).

44. As everywhere throughout the entire system, there is inadequate space for storage of personal possessions such as clothing and towels. (Rundle, T. 211). Miramar, as it exists and as it is operated, has an adverse effect on any one forced to live in such a degree of overcrowding with inadequate sanitary facilities. (Rundle, T. 213). The rage of the inmates against the system is more evident than elsewhere. (Díaz-Royo, T. 1685).

45. The Vega Alta Industrial School for Women is a euphemistic title. It is a prison. The physical plant is run down with exposed wiring, broken plumbing and a large gaping hole in the dining room. The budget for food preparation is \$1.15 per

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person and that figure within 50 cents, is reflective of the budget for food per inmate in each institution. Inmates have to go through the same procedures to see a doctor as they do in the male institutions. Medications are not provided and even patients who demonstrate their need for certain medication may have them withheld. The institution itself does not have sufficient medications and has to go out to the community to seek donations.

46. The medical services are provided by a general practitioner and a psychiatrist, each of whom comes to the institution about four hours a week. The schedule of the general practitioner, however, is set by the doctor himself, and no one knows in advance when he is coming. (King, T. 679). The psychiatrist visits the institution on Saturdays (Rundle, T. 244). The medical charts are not up to date, but most of the patients here have had a physical examination (King, T. 680). No record is kept of the administration of medications. The records for the psychiatric patients were deficient and none contained the elements which are generally accepted as necessary to justify the treatment program. (Rundle, T. 245). Less crowded than all other closed institutions, Vega Alta is, nevertheless, similar to all others in the general deterioration, lack of sanitary facilities, inadequate mental and physical examination and treatment.

47. The Bayamón Regional Institution, opened only four years ago as the then panacea for the prisoners who were housed

in "La Princesa", which Judge Torruella ordered closed,¹⁰ is the crowning disgrace of the entire penal system in Puerto Rico.¹¹

48. Bayamón was built primarily for pretrial detainees. It has a "rated capacity" of 640 inmates. The population figures range from 1,256 on the day of Dr. Rundle's visit, to more than 1,400 on the day the superintendent testified—May 29, 1980. There has never been less than 1,000 persons for at least two years. There are insufficient guards and the physical plant, the structure, the overcrowding and the lack of socio-penal services and the lack of medical services, including psychiatric services, presents major problems to the Administration.

49. The kitchen facilities are bad. There are open sewers and slow drainage. There are flies throughout the kitchen area; there were rat droppings and cat droppings; no hot water or soap for the kitchen workers; no caps or hair nets; multiple leaking pipes; no screens. (King, T. 690). The kitchen, in the opinion of the defendants' expert, presents a major public health problem. (Hastings, T. 2600).

50. The food appears unpalatable and there is evidence that the Administrator had to instruct the superintendent to give sufficient food. (Cruz de Batista, T. 2036). There is contradictory testimony concerning the availability of special diets. The superintendent testified that Bayamón could provide special diets and the defendants' expert testified that the institution was incap-

horrors was greater there by a mode and much greater subjective affect upon me and I think also upon some of the others who were with me.

"Doctor King, for example, he and I talked about that and there came a certain point we just felt we had to get out of there. We could not deal with it any more."

The Administrator of Correction, in response to the following question: "You have been in office three years and in those three years would you see that the people in Bayamón have been living in sub-human conditions?" answered: "Yes, but that did not begin three years ago." (Cruz de Batista, T. 1879-1881). See footnote 1, *supra*.

10. *Martínez Rodríguez v. Jiménez*, 409 F.Supp. 582, 587-588, 592, (D.P.R., 1976).

11. The Court was appalled viewing the motion picture and the still photographs. It must be much worse to visit it. The impressions of the witnesses convey, better than can the Court, the effect that Bayamón has upon the visitor. Dr. Rundle, in answer to a question posed by the Court, said at pages 413-414:

"(E)very time that I have been in a prison whether it was at Soledad when I went there to work for five years, in New York, or just on a visit, I come out depressed to some degree. And I have certainly been in situations which were very bad and were certainly very depressing. But I think the point I was making was that the concentration of the

able of providing them. (Hastings, T. 2764). The Court finds that Bayamón does not provide special diets when prescribed by physicians.¹²

51. The amount of food destroyed at Bayamón reaches astronomical proportions. Literally, tons of food have had to be destroyed because of contamination from rats, vermin, worms and spoilage. The Court finds that much of its spoilage stems from the lack of adequate sanitary conditions, poor storage and the lack of proper cleaning techniques.¹³ The Court further finds that the conditions in the kitchen are detrimental to the public health of the entire institution and that food poisoning, salmonella, shigellosis, staphylococcal infections and hepatitis are inevitable. (King, T. 696). The food supplied at Bayamón does not include fresh fruits or fresh vegetables, although attempts are made to supply the recommended daily requirements of protein, carbohydrates, fats, vitamins and nutrients. At \$1.40 a day or even at \$1.75 a day, it is not possible for the Administration to supply a balanced diet.

52. The plumbing throughout the entire institution is a source of public health hazard. The sanitation was found to be inadequate by every person who testified, including the superintendent. According to the defendants' experts, the sewer system was improperly built and there is a structural defect which prevents drainage. The Administration has a civil engineer, but has no sanitation engineer. The chronic overpopulation of Bayamón also causes the plumbing system to become fatigued. (Rivera, T. 1608). The condition in Bayamón is violating the environmental quality law. (Rivera, T. 1610). The toilets do not work; the urinals flush into the sinks; the floors and walls are ruined by seeping water; there has been internal flooding.

12. The Court finds that the superintendent of Bayamón was not a credible witness. The Court admonished this witness because he was evasive (T. 526). Whenever conflicting evidence as to actual conditions appeared in the record, the Court finds that the testimony of the trained expert observers is in every in-

53. The plumbing system at Bayamón does not connect with any city sewage system, but empties into open manholes. The manholes overflow. In the opinion of the Administration's engineer, the general plumbing and sanitation situation at Bayamón represents an emergency. (Rivera, T. 1627). The plumbing system at Bayamón is in a state of collapse. (Rivera, T. 1641). There is insufficient supervision and maintenance.

54. The intake section at Bayamón is designated as "Q" which stands for quarantined area. Here, pretrial detainees are kept. Although built to accommodate 68 persons, as many as 300 or more have been confined in "Q". Because the inmates in "Q" are pretrial detainees, they are not allowed to leave the area for any recreation or exercise. The majority sleep on the floor and many do not even have mattresses. It has always been overcrowded.

55. Most of the toilets in "Q" do not work; the urinals are overflowing; there are few showers and there is water on the floor and the smell of urine and excrement is omnipresent. In the individual cells, (and there is a group on each of the two floors of the "Q" section), young adults are held while awaiting trial. The young adults are placed into these individual cells to protect them from rape. There were, on the day of Dr. Hastings' visit, three young adults in each cell. (Hastings, T. 2586). The overcrowding in "Q" is so severe that it is a public health problem. (Hastings, T. 2735). The excuse for this inhuman treatment of persons who are presumed innocent is just that there is no other place to put them. (Cruz de Batista, T. 2054). The Administration claims that although this situation has existed since Bayamón was opened, that the situation is temporary. (Cruz de Batista, T. 2057). Despite the fact that everyone regards the overcrowding in "Q" in Bayamón

stance more credible than those of the employees of the institutions.

13. "I never visited a kitchen (before) where there was no soap for the institution." (King, T. 690).

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to be so severe as to present an emergency situation, no short-term plan has been made nor has any plan been presented to the Governor. (Cruz de Batista, T. 2072).

56. The dormitories, living quarters or modules at Bayamón are all overcrowded. The plumbing is bad in each module and the institution does not supply any articles of personal hygiene. No soap, towels, toothpaste, toothbrush, or underwear are supplied. Toilet paper is supplied, but in such grudging amounts that it may contribute to the disintegration of the plumbing system as inmates seek every means to keep clean. The lack of toilet and other items of personal hygiene is degrading and humiliating.

57. The individual dormitory units are also fire hazards. If there ever had been fire extinguishers and fire hoses, they are missing or destroyed and have never been replaced. There exists no evacuation plan, no disaster plan, nor any medical mobilization plan in the living areas. Because there are so many inmates at Bayamón, recreation and exercise is restricted. The inmates eat in shifts by module and are allowed exercise periods once or twice a week.

58. In Bayamón, there are 140 cells for maximum security. Almost all are occupied by persons who claim that they have enemies in the general population. The majority are occupied by only one inmate. Many toilets in many of the maximum cells do not flush. The inmates who are admitted to maximum, lose their custodial classification and are deprived of their privileges. They do not exercise outside of their cells and they eat in their cells.

59. The "calabozos" at Bayamón, as in Guayama, face a central corridor and have a solid steel door with two slits. The upper slit is so that the confinee can look out and

the prison guard can look in; the bottom slit is for passage of a food tray. Except for bathing at the sufferance of the penal guard, the person confined to "calabozo" is not permitted out for any reason. There are 12 "calabozos" and generally more than one person is placed in a single cell. As many as three have been placed in single cells. Seldom are persons placed in "calabozo" for disciplinary reasons. People are placed in "calabozo" for the same reason that they may be placed in maximum—they are either requesting asylum or they have been labeled psychotic by a prison guard. The passageway between the "calabozo" is frequently covered with raw sewage because of a broken sewer line in that area. The solid steel door interferes with sensory perception.

60. In the context of the physical setting of the "calabozos", the defendants' expert could find no medical or psychological or practical justification for the existence or use of solid doors in front of the "calabozos". (Hastings, T. 2742-2743). The mental cases that are in "calabozos" have had no psychiatric evaluation; in fact, there is no medical record for those that were there in April or May. No one seemed to have any knowledge as to the length of time persons were kept in "calabozos" at Bayamón. But prisoners who were in "calabozo" there have testified that they have been there for months. No one is given a hearing when placed in "calabozo" despite the fact that it is the Correction Administrator's interpretation of the regulation that everyone placed in a "calabozo" should have a hearing before being put there, or at least seven days after, if they were placed there as an emergency. (Cruz de Batista, T. 1902). The effect of being placed in "calabozo" is destructive to the personality.¹⁴

14. Dr. Diaz-Royo testified, at 1717:

"Aside from the despair and despondency, we cannot establish, but we can say that if the person had some mental disturbance prior to "calabozo", with some certainty I can say he will not get better. He will deteriorate, if he was angry he will get angrier. If he was [non] cognative or [had] defective organization, it will be worse at that level if you have something prior to that. Now if

you were a healthy human being and you were put in calabozo your memory is going to be impaired somehow, your problem solving abilities are going to deteriorate as has been demonstrated in experimental work

...
The effect could be permanent. He testified at 1718:

"If you have what has been called the pre-morbid personality—and premorbid doesn't

The risk of depriving fragile personalities of sensory perception is great. (Hastings, T. 2744).

61. No doctor visits the "calabozo". The Court has heard testimony as to persons who have recently died in "calabozo" for lack of medical attention, and the Court finds that on the basis of all the testimony, that there is no justification, medically or psychiatrically, or for any other reason, for the continued existence of the "calabozos".

62. Bayamón Regional Institution serves as the referral point for medical observation and treatment of the entire system. It has a roster of two part-time general practitioners who, combined, work less than 20 hours per week,¹⁵ several specialists, such as ophthalmologist, dermatologist, orthopedist, dental hygienist, radiologist, who are supposed to come for several hours a week, and a psychiatrist, who is supposed to come about ten hours a week. Although the Administrator of Correction stated that she knew that the proper standard was that they should at least have one full-time doctor for every 500 prisoners, there is no full-time doctor in the system. (Cruz de Batista, T. 1883). There is no current regulation concerning medical or psychiatric treatment, but there is a recognition that the American Medical Association's health standards for prisons should be adopted. (Cruz de Batista, T. 1897). There is also a recognition that the system needs at least ten full-time psychologists or psychiatrists. (Cruz de Batista, T. 1903). There is no policy to give physical examinations to pre-trial detainees as a matter of course, and in fact, they are not given. Histories are not taken of persons admitted into the system either as pre-trial detainees or as convicted persons, nor is there any psychiatric screen-

mean you are crazy, it means that you are vulnerable as all healthy humans, human beings are vulnerable if put under undue stress. "If you have certain premorbid traits which the calabozo situation particularly hits your structure, personality structure, you might permanently be impaired."

15. No expert who visited the institution ever met either of these general practitioners, no matter what day of the week or what time the inspection was made. When they were called

ing of new inmates. There is no internist; there is no official policy and procedures manual; there is no ambulance; there is no stretcher. There is a pharmacy manned by a registered pharmacist, but that does not alleviate the necessity for the inmates having to purchase special prescriptions with their own funds.

63. The physicians on call did not appear for the scheduled sick calls and sick calls are erratic, both as to the time they are held and the duration, and on occasion, the non-qualified Corporal of the guard conducts the sick calls.

64. There have been outbreaks of epidemics of mange, tuberculosis and dengue.¹⁶ No reports or investigations are made of the source of the infectious diseases. The medical records are generally non-existent. Where they do exist, they are by any standards, inadequate. Histories are not taken; physical examinations are not performed; laboratory tests, if made, are not recorded; X-rays, if taken, are not recorded; sick call visits are frequently not recorded.

65. As a referral system for the medical problem cases arising in other institutions, Bayamón is a failure. There are no copies of the consultations made at Bayamón for such prisoners, nor are there duplicate files for such prisoners. Bayamón is not equipped to perform any kind of X-rays, other than chest films. It has no laboratory nor any electrocardiographic machine. The medical area does not come close to fulfilling the needs of those confined in Bayamón, much less referrals from other institutions. (King, T. 692). People are becoming ill and people are dying for lack of medical treat-

by both Dr. King and Dr. Hastings for an interview, they could not be reached or would they come.

16. There is also a high incidence of venereal disease, but venereal disease is checked semi-annually through an agency of the federal government and most of the victims are identified and treated. Although venereal disease is prevalent, the most virulent are under control from the standpoint of public health.

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ment. There is no way of knowing whether an epidemic is in progress.¹⁷

66. The total number of psychiatrically ill prisoners is unknown. The estimates run up to 50% or more of the population. Those medical records concerning psychiatric care that do exist are unacceptable by any standard. (Rundle, T. 397). The psychiatric staff does not exist and there is little, if any, contact between the socio-penal worker and the psychiatrist. There is no excuse for not performing acceptable psychiatric evaluations or not having acceptable medical and psychiatric records, nor not having a sufficient staff to provide the necessary treatment.¹⁸ (Rundle, T. 315). There are probably 200 severely ill psychotics in the prison system who require medical care in a psychiatric hospital and many other hundreds who need intensive psychiatric care within the institution. There has never been any adequate psychiatric screening, and special treatment or isolation is given only to those who are completely disorganized and who are decompensating, or are in a state of cognitive deterioration. This evaluation of the severely mentally ill is now being made in a large part by penal guards who have no specialized training and only rely on their "experience".

67. At Bayamón, the psychotics who are not in "calabozo" are kept in that portion of the maximum security block known as Lower Maximum 1, but which is commonly referred to as "Máxima de Locos".¹⁹ Anywhere from 14 to 18 persons are kept in this area among whom are several "John Does",

persons for whom the Administration does not have even a name. The psychiatrist has not been to this area for more than one year and none of the persons confined here have seen a doctor for that period of time. (Hastings, T. 2754). Of the 18 persons who were there on the day of Dr. Rundle's visit, there were medical records for only four. (Rundle, T. 248). The records revealed very little and there was not enough information to determine from the records whether the medication that had been prescribed was appropriate. (Rundle, T. 254-255). Although it has been alleged that some of the persons were placed in this area because they were suicidal, there was no way to know from the record that that is so. If it is so, they are getting the worst possible treatment. (Rundle, T. 266). If someone is dangerously suicidal, he belongs in a psychiatric hospital. (Rundle, T. 266; Hastings, T. 2667). The inmates in "Máxima de Locos" are kept in cells naked, without beds, without mattresses, without any private possessions, and most of them without toilets that work and without drinking water. They are being cared for by an inmate who washes them daily. There is feces all around their cells and the stench is overpowering. Only two of the 18 are receiving any medication. Each of the prisoners now confined in "Máxima de Locos" belong in a psychiatric hospital. (Hastings, T. 2595, 2666; Rundle, T. 279).

68. There are 48 other serious mental cases in the psychiatric module, D-1-C

17. It is depressing to relate the testimony and the impressions of the experts.

"Relative to the number of people that are confined, I have not seen any system in which there was such an absolute lack of qualified staff available and I have not seen any system in which there was such an absolute lack of thoughtful direction or leadership or procedures. There was a complete absence of any kind of systemic planning and the kind of care that emerges as a result of lack of resources and the conditions, I would characterize as systemic malpractice, both medically and administratively." (King, T. 703).

"There is almost no reasonable medical care provided." (Rundle, T. 286).

18. The Court agrees with the following statement:

"A prison system takes command of a man totally and therefore, must accept the responsibility for providing for certain basic necessities, one of which is medical care and that includes psychiatric care. As far as I am concerned, when a man goes into a prison system, he must receive a medical examination, which should include a screening psychiatric examination by some one who is specially trained." (Rundle, T. 321).

19. Translation is Maximum Security for the crazy.

Lower.²⁰ The persons in the psychiatric module do not receive regular medical attention. One of the men that was there when the module was visited by Dr. Rundle, was in a catatonic stupor and his life may have been saved by the intervention of Drs. Rundle and King. (Rundle, T. 262-263; King, T. 768). These inmates are totally neglected, and what attention they get and what records and medications are distributed, come through the efforts of one of their members who writes in the records as if he were a doctor. The persons in D-1-C Lower are unsupervised and are all in a state of cognitive disintegration.

69. There is also a hospital at the Bayamón Regional Institution with 25 beds; 12 of the beds are for the use of the Anti-Addiction Services, who have contracted the services of a doctor and a nurse. That doctor and nurse do not provide even emergency care for anyone who is not their patient. There is no on-site laboratory for the hospital patients. The hospital contains a large gaping hole in the ceiling. The hospital has never received approval from the Secretary of Health, and many of the patients who are there probably do not need intensive hospital care. (Hastings, T. 2590). In the hospital charts, there is no laboratory data, nor are there records of complete physical examination, nor are there histories. (Hastings, T. 2590). The paraplegics who are there in the hospital, occupy four beds and receive no medical treatment. Because they are hospitalized, these paraplegics are precluded from work, study or contact with others. (Hastings, T. 2747). The hospital is not administered by a professional staff, but it is run by the Corporal of the guard together with a night para-medical and prisoners who have some nursing background. Admission to the hospital and hospital care does not seem to relate to known medical standards. The hospital and examining area has no hot water in the doctor's bathroom. (King, T. 686).²¹

20. The defendants' expert was never advised about these people. He was given the impression that there were only 40 identified severely psychiatrically ill in the entire penal system. (Hastings, T. 2753).

70. There is a position in the Central Office of the Administration of Correction called Coordinator of Medical Services. The duties of the Coordinator of Medical Services is to get the individual contract physicians to comply with their contracts; to buy medicines; to make changes in the budget and to coordinate the medical facilities from institution to institution and between the institutions and the community health services. There is no memorandum of standards or guidelines concerning the maintenance of medical records, the maintenance of psychological and psychiatric records, the keeping and recording of doctors' orders and prescriptions, the control of drugs or any other aspect of medical care at the institutions operated by the Administration of Correction. (Díaz-Delgado, T. 809). There are standard forms for medical histories to be filled out by the patient, standard forms for dental examination and other standard forms relating to physical examinations and prescriptions, but there is no standard utilization of these forms. (Díaz-Delgado, T. 811). There is no program to have inmates examined by a psychiatrist before being sent to the psychiatric wards. (Díaz-Delgado, T. 819). There is no memorandum concerning admissions to either "Máxima de Locos" or to the psychiatric module. (Díaz-Delgado, T. 820). There is no program or any regulations concerning intake physicals for all pretrial detainees, nor for intake physicals at any penal institution. (Díaz-Delgado, T. 820). The dermatologist and cardiologist resigned on May 8, 1980, and had not been replaced by the Medical Coordinator. The Medical Coordinator has never repaired the broken ceiling in the Hospital at Bayamón.

71. There is no program for the detection of viral diseases, dermatological diseases, infectious or venereal diseases and

21. There is no place within the hospital area to isolate any inmate with infectious or contagious disease. (Peterson, T. 727). Release from the hospital may be by a penal guard authority as well as by a doctor. (Peterson, T. 727).

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respiratory diseases in any of the institutions operated by the Administration of Correction. (Díaz-Delgado, T. 830). There is no program for X-rays, for dental inspection, for the detection of epileptics or other neurological disorders. (Díaz-Delgado, T. 831-832). There is no coordination to see that special diets issued upon the orders of a physician are in fact provided. (Díaz-Delgado, T. 833). There have been outbreaks of small epidemics of scabies, of mange and flu at every institution.

72. On the basis of all the evidence, the Court finds that the differences that exist between institution and institution, albeit, dramatic in some instances, is much less pronounced than the similarities. The system is run from a central office, with engineers, financial officers, penal program officers, medical coordinators, dietitians, socio-penal supervisors, records supervisors and budget controllers. Transfers of prisoners may be dictated by the central office, as well as its transfer of personnel. Policy, or the absence of policy, ultimately lies with the Administrator and the executive branch of the Commonwealth Government.

[1] 73. Thus, despite the insistence by the defendants and the concurrence by the Court that evidence be presented concerning each of the major institutions, the Court finds that the system is a unitary system and the relief that may be given must be on a system-wide basis.²²

74. Unsanitary conditions dangerous to the health and life of the inmates exist throughout the system. This includes raw sewage in the kitchens and living spaces, the plumbing breakdowns, the toilets that do not work, the inoperative sinks and showers, the plethora of flies, insects, ver-

min and rats. The stench of excrement and urine commonly associated with zoos is predominant throughout the system.

75. The physical impositions upon inmates are dangerous to the health and safety of the inmates throughout the system. Lack of beds, doubling upon mattresses, or lack of mattresses, doubling and tripling in individual cells, failure to give sufficient minimal living space, lack of adequate ventilation and the failure to give any articles of personal hygiene or to afford any privacy, is systemic.

76. The "calabozos" are ubiquitously used principally for improperly identified mental cases and for persons who seek asylum from threats of bodily harm. These cells are seldom used for disciplinary purposes, and even then, under conditions that are cruel and unusual. They are all in isolated areas of the respective institutions, all insufficiently attended, insufficiently lighted, most of them without the basic amenities of beds, mattresses, sheets, functioning toilets or drinking water, and all confinees in them are without any exercise, recreation or rehabilitative program.

77. The health care throughout the system leaves much to be desired. There is no program or plan or direction. Intake physical examinations are notable by their absence. There is no systematic record keeping. Records, when they do exist, may not include physical examinations, histories, laboratory tests, X-rays, sick call or progress notes, medication orders or diagnosis. Records for so-called psychiatric patients do not exist, or are sketchy and inadequate by any standard. Medical assistance depends upon persuading a chain of penal

22. By the third day of the hearing, the evidence was mounting that the commonality of the faults was much greater than the differences. During a colloquy, the Court stated: (T 360-361)

"(If the system is a unitary system as it apparently is where the central administration is carried out by the director here in San Juan and it applies to all the institutions through the superintendent, assistants, wardens and whatever, I am not going to enter an order specifically for each institution. If I do

enter an order, it will be addressed to the Administrator of Correction and that the Administrator would be the one in charge or the overseer to see that the Court orders are carried out....

"....
"And if there is one institution for example, let's talk about the calabozos. There is an order issued about closing calabozos and there is only one institution that uses them, that's better for the Administrator. She only has to close one instead of seventeen...."

guards that the inmate is sick enough to merit examination by a physician or nurse. Inmates die from lack of medical treatment with frightening regularity. Psychotics who should be hospitalized in psychiatric hospitals are kept caged like wild animals with no psychiatric or medical intervention. Others less disorganized are allowed to deteriorate. Medications are not properly dispensed, accounted for, or sometimes not even given without payment by the inmate. Special diets are almost non-existent, even when ordered by the prison physician. Medications necessary for health are not given on any regular basis. X-rays, laboratory tests, preventive medical and dental care are almost unknown. Epidemics of mange, scabies, respiratory and other infections occur.²³ Outside medical care depends at times upon the sufferance of the penal guards or upon a sufficiently large daily roster of guards so that enough are available to transport the inmates. Medical, psychiatric, psychological, nursing or paramedic staff is woefully small to cope with the number of inmates or the disease-infested environment. Deficiencies in health care and hygiene foster inmate frustration and resentment.

78. Death haunts the prisons. Suicides and stabbings occur from lack of supervision, and the overcrowded conditions where young adults mix with long-term prisoners, where pretrial detainees live in incredible

concentration camp-like units along with convicted felons, and where neglect may be so great as to be equated with brutality.²⁴ The excessive overcrowding, or acute population concentration, rampant in the system, makes adequate supervision of inmates very difficult in all institutions. The extremely high inmate-to-staff ratio negates personal interaction between the two, as the guards must spend most of their time protecting themselves. This specific condition more so than any other nurtures the highly volatile atmosphere which permeates all institutions.²⁵

79. The conditions heretofore enumerated are barbaric and shocking. If not stopped, more persons will needlessly die before their time, or will become severely ill. Constitutional violations do exist, and there is no adequate remedy at law.

80. Deference to the Commonwealth authorities to institute long-term solutions, or to defer action until the State Penitentiary reopens, or to wait 120 days for the inauguration of new medical solutions, is unwarranted. The indescribable conditions of confinement in the isolation cells, dungeons ("calabozos") and maximum security cells of the various institutions, as depicted in the photographs admitted into evidence and visually portrayed in the movies shown to the Court, demand from this Court immediate and corrective action.²⁶

23. In the Regional Institution of Bayamón alone, at a given time, approximately 200 inmates out of a population of 1265 were suffering from mange, or roughly 17%. During the same period of time anywhere from 200 to 300 inmates failed the tuberculosis tests, or roughly between 17% and 24%. (Maldonado-Vázquez, T. 528, 532).

24. Although the Court heard evidence concerning "calabozo" deaths which involved alleged beatings by prison officials, no findings of physical brutality are made. The proof is insufficient and brutality was not an issue framed by the show cause order. Suggestions of brutality appear interspersed throughout the record, especially in the testimony of the prisoners.

25. Contrary to defendants' expert's testimony to the effect that the level of tension at Bayamón Regional Institution was quite low (Dr. Hasting, T. 2587, 2754), the plaintiffs' experts

perceived in their visits a high level of tension. (Rundle, T. 286, 331, 381; King, T. 688-689, 705, 781; Fogel, T. 1259-1261, 1263-1264, 1307-1308; Diaz-Royo, T. 1687-1688). Subsequent events to the completion of the hearing proved Dr. Hastings wrong. The first page of the "San Juan Star", on June 28, 1980, carried the following banner headline: "Three Inmates Killed. One Injured in Bayamón Prison Brawl".

26. The Court's intervention is further sustainable by the inaction of the Governor's Special Commission of Inquiry (Plaintiffs' Exhibit 110). This commission was created with the specific duty to investigate the recent rash of escapes occurring in the jails of Puerto Rico. In the course of its fact-finding inspections of the various institutions one or more members of the Commission, composed by the Secretary of Justice, two former Secretaries of Justice, the Police Superintendent, and the Administrator,

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31. An emergency exists and irreparable harm will occur if immediate relief is not granted.²⁷

Conclusions of Law

1. The Eighth Amendment provides: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishment inflicted." The Eighth Amendment is applicable to the states through the Fourteenth Amendment. *Furman v. Georgia*, 408 U.S. 238, 92 S.Ct. 2726, 33 L.Ed.2d 346 (1972).

2. Puerto Rico occupies a unique position with relation to the United States and the Supreme Court has never resolved whether the inhabitants of Puerto Rico are protected by the Bill of Rights or by the provisions of the Fourteenth Amendment. *Calero-Toledo v. Pearson Yacht Leasing Co.*, 416 U.S. 663, 94 S.Ct. 2080, 40 L.Ed.2d 452 (1974). Nevertheless, the Supreme Court has categorically stated that regardless of whether the rights of its inhabitants are afforded protection under the Eighth or Fourteenth Amendments, such protection is available through suits filed pursuant to 42 U.S.C., Section 1983, and jurisdiction lies under 28 U.S.C., Section 1343. *Examining Board of Engineers, Architects and Surveyors v. Flores de Otero*, 426 U.S. 572, 96 S.Ct. 2264, 49 L.Ed.2d 65 (1976).

[2] 3. Pretrial detainees, however, are not prisoners and their restraint is justifiable under either the Fifth Amendment or the Fourteenth Amendment, provided that their restraint is not punished or the conditions and restrictions imposed upon them do not otherwise violate the Constitution. *Bell v. Wolfish*, 441 U.S. 520, 99 S.Ct. 1861, 60 L.Ed.2d 447 (1979).

[3] 4. Absent an intent to punish, if the restriction or condition of pretrial de-

became aware of the conditions of confinement affecting the plaintiffs and their repercussions in light of recent federal court's requirements that penal conditions must comply with civil rights. The report was delivered personally to the Governor by the Secretary, but the Commission, a continuing commission, never met after the report was submitted. (T. pp. 1935 thru 1980).

tention is arbitrary or purposeless in relation to the maintenance of the effective management of the detention facility and to insure the detainee's presence at trial, then a court may infer that the purpose of the governmental action is punishment that may not constitutionally be inflicted upon detainees *qua detainees*. *Bell v. Wolfish*, *supra*, 441 U.S. at 538, 99 S.Ct. at 1874.

[4] 5. The overcrowding, lack of sanitation, the absence of health facilities or adequate medical or psychological services, the triple bunking of young adults, the failure to protect the pretrial detainees from attack, constitute punishment, whether intended or not.

[5] 6. The Eighth Amendment proscribes more than physically barbarous punishment. *Gregg v. Georgia*, 428 U.S. 153, 96 S.Ct. 2909, 49 L.Ed.2d 859 (1976) (Joint Opinion of Stewart, Powell and Stevens, JJ.). Punishments which are incompatible with "the evolving standards of decency that mark the progress of a maturing society" are repugnant to the Eighth Amendment. *Trop v. Dulles*, 356 U.S. 86, 78 S.Ct. 590, 2 L.Ed.2d 630 (1958).

7. Embodied within the Eighth Amendment are "broad and idealistic concepts of dignity, civilized standards, humanity and decency . . .", *Jackson v. Bishop*, 404 F.2d 571, 579 (8 Cir., 1968) and prohibitions of treatment which "involve the unnecessary and wanton infliction of pain." *Gregg v. Georgia*, *supra*, 428 U.S. at 171-173, 96 S.Ct. 2925 at 2924-25 as quoted in *Estelle v. Gamble*, 429 U.S. 97, 102-103, 97 S.Ct. 285, 290, 50 L.Ed.2d 251 (1976).

[6] 8. The government's obligation to provide medical care, recognized in the legislation of Puerto Rico, if not properly met, may produce physical torture or lingering

27. The defendants' experts position on direct examination was that all of these ills existed, but time should be granted for reorganization. However, he admitted on cross-examination that emergency conditions were everywhere and his own recommendations were that drastic measures be implemented immediately.

death in the worst cases and in less serious cases, may result in pain and suffering. Deliberate indifference to the serious medical needs of the inmates constitutes "unnecessary and wanton infliction of pain" proscribed by the Eighth and Fifth Amendments. *Estelle v. Gamble*, *supra*, at 104, 97 S.Ct. at 291.

[7] 9. The medical program or better said, the lack of it, in the institutions operated by the Puerto Rico Administration of Correction violates the Constitution.²⁸

10. If individually, any one of the following practices does not violate the Constitutional interdictions, the combination of them does. The failure to have a medical director; the failure to employ any full-time medical or psychiatric personnel; the failure to provide intake examinations of all pretrial and convicted persons; the failure to maintain proper medical records or standards; the failure to permit direct access from the prisoner to the medical authorities; the failure to provide articles of hygiene; the failure to screen the mentally ill, or if screened, the failure to afford meaningful treatment; the failure to hospitalize the seriously ill; the failure to provide medically ordered special diets; the failure to provide needed prescriptions; the failure to provide meaningful dental care; the isolation of the known psychotics without clothing, functioning sanitary facilities, treatment or medication; the failure to screen epileptics, diabetics, tubercular inmates or persons suffering from kidney or

other diseases; the unsupervised isolation of inmates who have made suicidal threats; the close juxtaposition of ill and healthy; the failure to stop disease-producing unhygienic conditions, like open kitchen drains, raw sewage in dormitories and elsewhere; permitting the infestation of food and clothing by lice, scabies, rats and other vermin; and the failure to have any medical planning, emergency equipment and procedures and disaster plans.

[8] 11. Solitary confinement is not *per se* unconstitutional. If the segregated confinement involves neither intolerable isolation, nor inadequate food, heat, sanitation, lighting or bedding, and if the confinement is short-termed, and properly supervised with no lack of necessary medical attention, it offends no Constitutional prohibition. *O'Brien v. Moriarity*, 489 F.2d 941 (1 Cir., 1974).

12. Isolation, for any reason, without adequate sanitary conditions, is unconstitutional. *Wright v. McMann*, 387 F.2d 519 (2 Cir., 1967); *Hancock v. Avery*, 301 F.Supp. 786 (M.D.Tenn., 1969); *Jordan v. Fitzharris*, 257 F.Supp. 674 (N.D.Cal., 1974); *Novak v. Beto*, 453 F.2d 661 (5 Cir., 1971).

13. Isolation, for prolonged periods of time without exercise and recreation, is unconstitutional. *Sinclair v. Henderson*, 331 F.Supp. 1123 (E.D.La., 1971); *Laaman v. Helgemoe*, 437 F.Supp. 269 (D.N.H., 1977).

14. Isolation which threatens the physical health of prisoners and which interferes with medical attention is unconstitutional.

28. Prior to the decision of the Supreme Court in *Estelle v. Gamble*, *supra*, courts had determined that prison officials and the medical officers employed or contracted by them, had wide discretion in treating prisoners and only a clear allegation and proof of abuse of discretion would elevate the claim to constitutional proportions. However, there were cases prior to *Estelle v. Gamble*, which held that failure or refusal to provide medical care, or treatment so cursory to be no treatment at all, are compatible with the "deliberate indifference to serious medical needs" test of *Estelle v. Gamble*. The evidence in this case supports the conclusion that the practice is unconstitutional. See *Tolbert v. Eymann*, 434 F.2d 625, 626 (9 Cir., 1970) (warden refused authorized medicine); *Page v. Sharpe*, 487 F.2d 567, 569 (1 Cir., 1973) (con-

duct in the giving or failing to supply treatment to prisoners which shocks the conscience is actionable under 1983); *Dewell v. Lawson*, 489 F.2d 877 (10 Cir., 1974) (failure to procure urgently needed attention may amount to cruel and unusual punishment); *Thomas v. Pate*, 493 F.2d 151 (7 Cir., 1974), cert. den., sub nom. *Thomas v. Cannon*, 419 U.S. 879, 95 S.Ct. 143, 42 L.Ed.2d 119 (1974) (medical care so clearly inadequate as to amount to refusal); *Newman v. State of Alabama*, 503 F.2d 1320, 1331 (5 Cir., 1974), cert. den. 421 U.S. 948, 95 S.Ct. 1680, 44 L.Ed.2d 102 (1975) (lack of available personnel; ill-conceived emergency and referral procedures, shortages in drug supplies, disorganized lines of therapeutic responsibility, glaring unhygienic conditions) (callous indifference, n. 14, 1330).

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Gates v. Collier, 501 F.2d 1291 (5 Cir., 1974); *Ramos v. Lamm*, 485 F.Supp. 122 (D.Colo., 1979).

[9] 15. Solitary confinement of young adults is unconstitutional. *Morales v. Turman*, 364 F.Supp. 166 (E.D.Tex., 1973); *Inmates of Boys' Training School v. Affleck*, 346 F.Supp. 1354 (D.R.I., 1972).²⁹

[10] 16. Solitary confinement of psychiatric patients without supervision, without treatment and without medication, is cruel and barbaric. *Laaman v. Helgemoe*, *supra*.

[11] 17. The use of the solitary confinement cells known as "calabozos" for housing persons voluntarily seeking protective custody, accompanied frequently as it is with multiple prisoners per cell, lack of any exercise, lack of working toilets, no drinking water, no ventilation, unbearable heat and insufficient light, with the accompanying loss of work privileges and change in classification, constitutes arbitrary and cruel punishment.

[12] 18. The "calabozos" in the Puerto Rico's prisons physically violate the Eighth Amendment proscriptions. They are isolated from the rest of the prisons, attended irregularly, they contain insufficient space, light and ventilation, are overpoweringly destructive, and some are invitations to suicide. "With or without improvements" their continued use "cannot be suffered in a society governed by our Constitution". *Laaman v. Helgemoe*, *supra*, at 323.

19. The punishment of persons because they are mentally disturbed is unconscionable and barbaric. Isolation without clothes or bedding in "calabozos" or in filthy stink-

ing maximum security cells of mentally ill persons, not only violates all modern treatment practices, but also offends all notions of civilized behavior of humanity. *Estelle v. Gamble*, *supra*; *McCray v. Burrell*, 516 F.2d 357 (4 Cir., 1975).

[13] 20. The failure to hospitalize known mentally ill under conditions where the penal institution personnel know that they cannot provide medical or psychiatric services constitutes cruel and unusual punishment. *Bowring v. Godwin*, 551 F.2d 44 (4 Cir., 1977).

[14] 21. Overcrowding is not *per se* a violation of the Eighth Amendment's prohibition against cruel and unusual punishment. Nor is this Court bound by a standard of "rated capacity" set by the institution or any of the organizations who have published standards³⁰ for jails and prisons. According to *Chapman v. Rhodes*, 434 F.Supp. 1007, 1021 (S.D. Ohio, 1977), the American Correctional Institute has set 75 square feet, the National Sheriffs' Association Handbook on Jail Architecture calls for 70-80 square feet for single occupancy detention, and its Manual on Jail Administration sets 55 square feet as minimal for multiple celling. In 1969, the Army standard was 55 square feet and the National Council on Crime and Delinquency Model Act for the Protection of the Rights of Prisoners concluded that not less than 50 square feet of floor space in any confined living area should be provided. The court in *Chapman*, *supra*, held that double celling in 60-foot cells was federally unconstitutional.

29. Young adults are not juveniles, but Judge Pettine's observation is subscribed by this Court. He said in 346 F.Supp., at 1367:

"If a boy were confined indoors by his parents, given no education or exercise and allowed no visitors, and his medical needs were ignored, it is likely that the state would intervene and remove the child for his own protection. See R.I.G.L. 14-34. Certainly, then, the State acting in its *parens patriae* capacity, cannot treat the boy in the same manner and justify having deprived him of his liberty. Children are not chattels."

30. The plaintiffs' experts, although mentioning various standards, explicitly negated that their opinions were based upon the standards as some sort of talisman for space requirements. Dr. Hastings was likewise wary of putting stress upon the standards. The Administrator of Correction did state that she did refer to some standards and although she never applied for accreditation with the American Correctional Association, she is aware of their standards and plans to attend the ACA convention.

Other cases require space limits of 70 square feet or 75 square feet in dormitories that is the concern of this suit, *Battle v. Anderson*, 564 F.2d 388 (10 Cir., 1977); *Palmigiano v. Garrahy*, 443 F.Supp. 956 (D.R.I., 1977); *Anderson v. Redman*, 429 F.Supp. 1105 (D.Del., 1977), or as low as 50 square feet of space. *Gates v. Collier*, 501 F.2d 1291 (5 Cir., 1974). This Court has previously set the 70 square feet minimum as constitutional requirement in *Martinez Rodriguez v. Jiménez*, 409 F.Supp. 582 (D.P.R., 1976). In view of the most recent decisions, especially *Williams v. Edwards*, 547 F.2d 1206 (5 Cir., 1977); *Jordan v. Wolke*, 460 F.Supp. 1080, 1086-1089 (E.D. Wis., 1978); and *Bell v. Wolfish*, *supra*, this Court rejects any approach that will determine any fixed amount of minimum space as constitutional.

[15] 22. The actual square footage in the dormitories of Puerto Rico prisons is closer to 20 square feet and does not approximate any suggested standard. In some areas, such as Aguadilla, Ponce, Miramar and the "A" Sections of Bayamón and Guayama, the space is almost non-existent. The dormitories in all these institutions are all lacking in space, sanitation, ventilation and are such firetraps that in some places the inmates are not confined during daylight hours, but allowed to move about within the confines of the institutions. Nevertheless, this mobility is not synonymous with recreation. It is the Court's conclusion that the space provided in the dormitories of the closed institutions, when considered together with the poor sanitary facilities and the insufficient light and ventilation and lack of privacy, are all unconstitutional.

23. There has been no suggestion that the individual cells at Río Piedras Maximum Unit, Bayamón or Guayama, are constitutionally improper for single cell occupancy. They are ample, provided that the toilets work and the inmates are provided beds, bedding and drinking water. This Court would permit, if it be required for short periods of time, double occupancy of these cells with the same provisions. The cells are too small for triple occupancy.

24. With the exception of the Vega Alta Industrial School for Women and the Maximum Security Unit at Río Piedras, every closed institution operated by the Administration of Correction is unconstitutionally overcrowded.

[16] 25. The inmates who require special medications or special diets are being cruelly punished when such medication or special diet is withheld. *Pugh v. Locke*, 406 F.Supp. 318 (M.D.Ala., 1976); *Mitchell v. Untreiner*, 421 F.Supp. 886 (N.D.Fla., 1976); *Westlake v. Lucas*, 537 F.2d 857 (6 Cir., 1976); *Goldsby v. Carnes*, 429 F.Supp. 370 (W.D.Mo., 1977); *Laaman v. Helgemoe*, *supra*.

Remedies

[17] "Once a right and a violation have been shown, the scope of a district court's equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies." *Smith v. Sullivan*, 553 F.2d 373, 381 (5 Cir., 1977), citing Chief Justice Burger in *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 91 S.Ct. 1267, 28 L.Ed.2d 554 (1971). Moreover, inadequate resources, which has been the main thrust of defendants' arguments, can never justify depriving any person of his constitutional rights. *Gates v. Collier*, 501 F.2d 1291, 1309 (5 Cir., 1974); *Shapiro v. Thompson*, 394 U.S. 618, 89 S.Ct. 1322, 22 L.Ed.2d 600 (1969).

Our Court of Appeals has suggested caution in ordering remedies without considering administrative convenience or expense. *Nadeau v. Helgemoe*, 561 F.2d 411, 417 (1 Cir., 1977). On the other hand, when faced with pervasive failure of responsible authorities to maintain the Essex County Jail in Massachusetts in conformity with constitutional requisites, it held that the district court did not abuse its discretion in ordering the jail closed if certain mandated corrections were not implemented. *Dimarzo v. Cohill*, 575 F.2d 15 (1 Cir., 1978). There, at pages 19-20, the Court said:

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"Faced with unconstitutional conditions, the court ordered that the facility be brought within constitutional parameters. The remedy does not exceed the constitutional violation. See *Milliken v. Bradley*, 418 U.S. 717, 744-745, 94 S.Ct. 3112, 3126-3127, 41 L.Ed.2d 1069 (1974) (*Milliken I*). The mandated changes are modest in nature, fair to the inmates and not oppressive to the Correction authorities. We conclude that, on the facts of this case, the order of the district court is 'reasonable, feasible, and workable'. *Swann v. Board of Education*, [*Swann v. Charlotte-Mecklenburg Board of Education*, *supra*] 402 U.S. at 31, 91 S.Ct. 1267, at 1283.

"We do not understand defendant Hall's complaint to lie with the specifically mandated changes, but rather with the trump card held by the district court, namely, the threat of ordering Essex closed if the changes are not made. We find neither error nor abuse of discretion in the court's action. A district court can order changes which will force the state to expend funds. *Milliken v. Bradley*, 433 U.S. 267, 288-291, 97 S.Ct. 2749, 2761-2762, 53 L.Ed.2d 745 (1977) (*Milliken II*); *Edelman v. Jordan*, 415 U.S. 651, 667-668, 94 S.Ct. 1347, 1357-1358, 39 L.Ed.2d 662 (1974); *Martinez Rodriguez v. Jimenez*, 537 F.2d 1 (1 Cir., 1976). If the legislature should balk at allocating funds for court ordered changes, an appropriate remedy for a court to choose, at least conflicting with the principles of federalism and the separation of powers, is to order the facility closed. See *Rhem v. Malcolm*, 507 F.2d 333, 399 ([2] Cir., 1974); *Inmates of the Suffolk County Jail v. Kearney*, 573 F.2d 98 (1 Cir., 1978)."

Balancing as we must, the rights of the inmates with the duties of the state officials to operate their facilities with that

degree of discretion and within the confines of their budgetary allowances as provided by state law, we conclude that certain conditions can no longer be tolerated. The "calabozos" must go. There is no justification for using these cells for mentally ill or to isolate persons with communicable diseases. There is no justification for ever putting a pretrial detainee in such a chamber. While persons who seek asylum or protective custody may forfeit certain privileges, there is no constitutional justification for imposing added punishment upon such persons by confining them in this type of cell. Even if they were to be used for disciplinary purposes, only, these cells do not pass constitutional muster. They are so far removed from the rest of the institution or in such an isolated area that there is no hope of anyone placed in such a cell receiving adequate supervision, food, water, sanitation or medical facilities.

The psychotics must be removed from the penal institutions. Nothing we have seen is more depressing than the sight of young men totally out of contact with their surroundings and reality, stripped naked and left to their delusions and hallucinations without the benefit of working toilets, toilet paper, drinking water, beds, mattresses or linen, human attention, medical care or medications. The prisons cannot cope with these sick persons. All the identified psychotics or severe mentally ill must be removed forthwith and placed by the Commonwealth in proper psychiatric hospitals.³¹

Every incoming inmate, whether pretrial detainee or convicted prisoner must have a complete screening medical examination within one week from the date of his admission. To have such an examination presupposes the existence of proper systems or record keeping, regular annotations in the records and adequate personnel and staff to

31. The Court is aware, through testimony presented during the course of the hearings, that in many instances the superintendent of the institution sends identified psychotics or severe mentally ill inmates to the Forensic Ward of the Psychiatric Hospital of the Commonwealth of Puerto Rico, only to have them returned to the institution on even date. This

reversion occurs because there may not be sufficient beds at the Hospital to accept these patients. That does not constitute an excuse. There are other facilities, including private facilities, in the Commonwealth of Puerto Rico where these seriously mentally ill can be treated.

maintain the records. It also presupposes the existence of laboratory testing for basic purposes such as the determination of tuberculosis and venereal disease, as well as X-ray equipment. Physical examinations must be taken by trained personnel who take their own personal histories and do not rely upon the inmates who may have varying degrees of literacy, to fill out forms.

Not only must there be medical screening of the inmates, there must also be psychiatric screening to determine which inmates are so seriously ill as to require hospitalization in a psychiatric facility outside the Administration of Correction and to determine which require treatment and the intensity of such treatment within the penal institutions. Psychiatric examinations presuppose trained personnel under the supervision of qualified psychiatrists. The Court is not in a position to direct the institutions that they must employ so many psychiatrists and so many psychologists or so many psychiatric nurses or psychiatric social workers, but it should be obvious to all that housing 4,200 persons and accepting responsibility for their medical and psychiatric well-being makes it obligatory that the Administration of Correction place the medical care under the supervision of a full-time medical director who has as his assistant a full-time director of psychiatric services.

Medical and psychiatric screening of just the incoming inmates will not alleviate the medical problems. A complete screening of the penal population must be done at once. Teams of doctors and nurses may be necessary, but the health and lives of the inmates can no longer be left to blind chance. The authorities must know which inmate is diabetic, which has a kidney problem, which a respiratory infection, as well as which has a communicable disease.

Each inmate who enters the penal population or the pretrial detainee population of the facilities operated by the Administration of Correction is entitled to continue to receive any life-supporting medication, prescription or special diet that he had in civilian life. Each inmate has the right to receive medications, prescriptions and diets

as they have been prescribed by a physician while the inmate is incarcerated. It may prove more cost effective to locate such prisoners in a single unit, but that is not the concern of the Court.

It should be apparent from all of the reported opinions in this field that the conditions under which prisoners and pretrial detainees are kept in Puerto Rico are barbaric by any legal standard. The overcrowding appears worse than in any other reported decision, and the sanitation and public health standards employed are among the poorest that one could imagine. The Court is not going to order that all the prisons in Puerto Rico be closed. When La Princesa was closed, the description of the conditions as they existed there does not impress the Court as being worse than what was seen in the films and photographs concerning the remaining facilities in the Commonwealth of Puerto Rico.

The Court also will not appoint a Master to operate the facilities at this time. The failure of the officials of the Commonwealth of Puerto Rico to perform the duties imposed upon them by statute and the Constitution is more than casual indifference. It approaches a deliberate attempt to inflict pain and suffering. Nevertheless, without foreclosing the possibility of such an appointment in the future, or of any other remedy that may be necessary, the Court is of the opinion that the Commonwealth officials must learn to run their own prisons.

The conditions cannot be corrected overnight. However, constitutional rights cannot be delayed because the correction of certain conditions is either difficult or costly. Throughout the hearing, the defendants have tried to assure the Court that the conditions were being remedied and that with the opening of the State Penitentiary in July many of the plaintiffs' complaints would disappear. July has come and gone and the State Penitentiary has not opened. The only other planned construction for which appropriations are made are at Fajardo and a new young adult detention center at the Zarzal prison camp. The Court

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does not believe that these additions will alleviate the overcrowding pressure.³²

The prisons will have to be kept in a cleaner and more sanitary condition, or in a condition which does not represent an environmental control problem on the outside and a public health problem in the inside. Prisoners cannot live in the overcrowded conditions in which they now live. Although the Court does not think it is sufficient, for temporary purposes, within a period not to exceed six months, each prisoner in Puerto Rico shall be provided with at least 35 square feet of space for himself and his belongings. The 35 square feet of space may not be halved by the mere expedient of doubled tiered bunking in dormitories.

The following order is entered as an emergency order for temporary and provisional relief. It is merely a stopgap to comply with what the defendants' expert stated were the goals of a prison system from a health standpoint. He said that the primary purpose was to prevent death; secondly, to prevent disease; thirdly, to prevent disability; then to prevent disruption of the Administration or flow of services; to prevent dissatisfaction among the inmates; and finally, to prevent discomfort. As the prison system in Puerto Rico now functions, it prevents none of these things. It is therefore,

ORDERED, that all "calabozos" or dungeons or isolation cells in each of the closed institutions operated by the Administration of Correction be and hereby are closed; and it is further

ORDERED, that no such similar cells shall be constructed or used in any facility operated by the Administration of Correction; and it is further

ORDERED, that all persons presently confined in a "calabozo" cell because they are mentally unfit and all persons presently

confined in the unit known as Lower Maximum 1 (Máxima de Locos), at Bayamón Regional Institution, be forthwith transferred to psychiatric hospitals; and it is further

ORDERED, that all persons presently confined in the unit known as the "psychiatric module" of D-1-C Lower at the Bayamón Regional Institution or in the dormitories for the mentally ill at Aguadilla (Galera de Locos), or any other person confined in any other ward or any facility operated by the Administration of Correction and labeled as mentally unfit, be examined by a qualified psychiatrist within ten (10) days from the date of this Order to determine whether said psychiatrist recommends treatment of such persons in a psychiatric hospital, or whether treatment can be continued under proper psychiatric guidance within the penal institutions; and it is further

ORDERED, that henceforth and from the date of this Order, neither the Administrator of Correction nor any person operating as an employee, servant, agent or contracting party with the Administration of Correction, may place known psychotics or severely mentally ill persons in any isolation cell or in any other cell or dormitory or ward, without constant attention and medical care, and shall, if the medical conditions so warrant, transfer such inmate to a psychiatric hospital; and it is further

ORDERED, that not later than September 22, 1980, the defendants, or any of them, shall notify the Court that a full-time medical director has been appointed for not less than one year; and it is further

ORDERED, that if the defendants do not appoint a medical director within said time, the Court, as a provisional measure only, will appoint a medical director to serve until a full-time, permanent director is appointed by the defendants; and it is further

32. The Court has taken judicial notice of the fact that the Legislature of Puerto Rico has passed a revised penal code which adopts obligatory sentencing and modified determinate sentencing. Without passing judgment on the legislation, experience teaches us that obligatory sentencing radically increases prison popula-

tions and determinate sentencing inevitably leads to prisoners remaining in jail for longer periods of time. No appropriations have been made for the facilities that will be needed to house the large influx of prisoners in the immediate future.

ORDERED, that the medical director appointed shall forthwith institute unified plans and procedures for the maintenance of medical records, standardize the contents of medical records and order that all information of a medical nature, including history, physical examination, laboratory tests and their results, X-rays and their results, diagnoses, doctors' orders, prescriptions and medications given, inter alia, be included in each such record; and it is further

ORDERED, that the medical director appointed shall be empowered to employ such staff of professionals, be they doctors, nurses, paramedics, psychiatrists, psychologists, psychiatric nurses, psychiatric social workers, dentists and dental hygienists as may be necessary to provide adequate medical care and attention to the entire penal population; and it is further

ORDERED, that within one week from his appointment, the medical director shall establish procedures for the medical screening of each incoming pretrial detainee or prisoner, which shall include a complete physical examination and such tests as may be necessary to diagnose tuberculosis, venereal disease, epilepsy, diabetes, chronic kidney disease, or any communicable disease; and it is further

ORDERED, that from the commencement of the screening of all incoming inmates, each inmate shall be screened medically and psychologically within one week from the date of his entry into the custody of the Administration of Correction of the Commonwealth of Puerto Rico; and it is further

ORDERED, that among the persons to be employed by the medical director shall be a psychiatrist who shall be in charge of the psychiatric care for emotionally and mentally disturbed inmates; and it is further

ORDERED, that the psychiatrist in charge employed by the medical director shall forthwith establish procedures for the psychiatric screening of all incoming inmates into the facilities operated by the Administration of Correction; and it is further

ORDERED, that those incoming inmates who require hospital treatment in a psychiatric institution shall be transferred thereto and that those incoming inmates who require intensive psychiatric treatment shall have such treatment provided as is necessary; and it is further

ORDERED, that the psychiatric screening of all incoming inmates shall commence within one week from the appointment of the psychiatrist in charge, whose appointment shall be made within one week of the appointment of the medical director; and it is further

ORDERED, that within two months from the date of this Order the medical director shall cause the entire existing population in the custody of the Administration of Correction to be screened with a complete physical examination and psychiatric examination for the detection of any chronic disorder or any communicable disease; and it is further

ORDERED, that the screening of the entire population of the facilities operated by the Administration of Correction shall be completed within three months of the date it is commenced; and it is further

ORDERED, that the Administration of Correction shall provide to each incoming inmate, whether pretrial detainee or convicted person, soap, towels, toothpaste and toothbrush, commencing immediately; and it is further

ORDERED, that the Administration of Correction shall provide all presently confined pretrial detainees and convicted persons, soap, towels, toothpaste and toothbrush, and that such items shall be completely distributed within sixty (60) days from the date of this Order; and it is further

ORDERED, that all food handlers shall be required to have had a physical examination and tests for tuberculosis or venereal disease; and it is further

ORDERED, that such examinations shall be provided to food handlers hereafter so that no food handler shall be more than six (6) months on job duty without such an examination; and it is further

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ORDERED, that all food handlers be provided caps or hairnets for use while handling foods; and it is further

ORDERED, that the Administration of Correction shall immediately repair the plumbing and sewage system at the Bayamón Regional Institution; and it is further

ORDERED, that a report concerning said repairs shall be filed with this Court within one month from the date of this order; and it is further

ORDERED, that the Administrator of Correction shall, at the time of filing said report, also report on the repairs and modifications of the sanitary and sewage system of all other closed institutions and any other steps taken to improve said conditions; and it is further

ORDERED, that the Administrator of Correction take the necessary steps to insure that each inmate, whether prisoner or pretrial detainee, be afforded no less than thirty five (35) square feet of living and sleeping space. This goal of 35 square feet per inmate shall be achieved in stages as necessary within six (6) months from the date of this order; and it is expressly provided that said space requirement of 35 square feet is a temporary measure only; and it is further

ORDERED, that plans shall be submitted within ninety (90) days from the date of this Order showing the steps the Administration of Correction is taking to provide no less than 70 square feet per individually celled inmate and 55 square feet for inmates housed in dormitories, provided that said space limitations be accompanied by detailed plans for time out of cells by the inmates in restricted dormitories; and it is further

ORDERED, that henceforth no inmate or pretrial detainee shall be denied any medication prescribed by a qualified physician, nor shall any inmate be denied a special diet prescribed by a qualified physician, unless said prescription is rescinded for medical reasons by the medical director appointed; and it is further

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ORDERED, that the injunction ordered herein is considered to be a claim separate and apart from other claims, including those for costs and attorneys' fees within the context of Rule 54(b) of the Federal Rules of Civil Procedure.

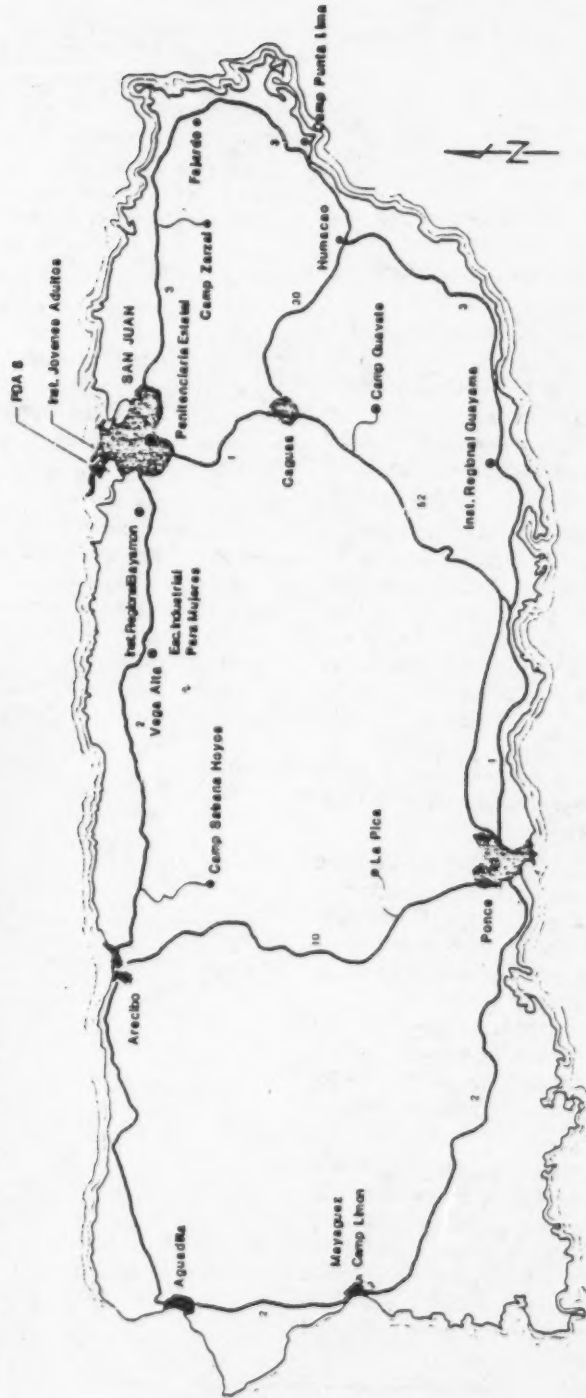
There is no just reason for delay, and the Clerk of this Court is instructed to enter this Opinion and Order forthwith as a judgment so that this Order be made immediately appealable.

This Court shall maintain continuing jurisdiction over the enforcement of these Orders, and in order to permit the plaintiffs an opportunity to contest any report or statement filed by the Administration of Correction, it is

ORDERED, that the seven plaintiffs' attorneys who appeared at trial shall be permitted to enter into any of the institutions operated by the Administration of Correction and to confer with their clients and to inspect any of the conditions covered in this Order.

IT IS SO ORDERED.

Puerto Rico



Senator MATHIAS. Our next witness is Jeffrey Harris, Deputy Assistant Attorney General, who will represent the Department of Justice.

Good morning, Mr. Harris. We are glad to have you back again with us here in the committee.

STATEMENT OF JEFFREY HARRIS, DEPUTY ASSOCIATE ATTORNEY GENERAL, DEPARTMENT OF JUSTICE, ACCOMPANIED BY FRED FRIEDMAN, SPECIAL ASSISTANT TO THE ASSOCIATE ATTORNEY GENERAL

Mr. HARRIS. Good morning, Mr. Chairman. Again, it is a pleasure to be here.

First, I would like to introduce Fred Friedman from the Department of Justice who is accompanying me today; and if it meets with your approval, I would like to submit my statement for the record and give a brief summary of it.

Senator MATHIAS. It not only meets with my approval but with my enthusiastic endorsement, and it will appear in the record as if read.

Mr. HARRIS. Thank you, Mr. Chairman.

We appreciate the opportunity to offer the views of the Department of Justice on S. 186, a bill to establish a Federal program of assistance to State and local criminal justice agencies for the planning and construction of criminal justice facilities. You have also asked for the Department's position on two related bills: S. 1597, to establish a corporation for prison industries, and S. 1690, to assure that prisoners have marketable skills and basic literacy before being released on parole.

S. 186 would establish a Criminal Justice Facilities Administration in the Department of Justice headed by a Presidentially-appointed administrator. This entity would be authorized to make grants to States to \$6.5 billion in the period from October 1, 1982, until September 30, 1988, to acquire, build, modernize, and equip criminal justice facilities such as prisons, jails, courthouses, police stations, and sheriffs' offices.

While there is a need for funds to replace or renovate outmoded or substandard correctional facilities, the Department of Justice opposes S. 186. This is an era when the Government must recognize the limitation to its fiscal resources. Responsibility for and control over the construction of State and local law enforcement facilities most properly resides in the State and local government. The Federal Government should accept the funding role only when its responsibility is clear and there is no other logical choice.

While we are sympathetic to the goals of S. 186, the Department has concluded after careful deliberation that the substantial expenditure that S. 186 would require cannot be justified in terms of the current budgetary goals and objectives. Because the Department is keenly aware of the problems faced by State and local correctional authorities, we are firmly committed to finding other methods of providing effective support and assistance among the Department's surplus properties program.

As a result of the recommendation of the Attorney General's Task Force on Violent Crime, we have begun a program designed

to facilitate the transfer of surplus Federal properties to States and localities for use as prisons and jails.

The Attorney General has established a clearinghouse within the Bureau of Prisons to collect and disseminate information on suitable properties. With the cooperation of the General Services Administration, our program has already resulted in the lease of an abandoned Air Force radar station in New York State for use as a medium security facility for 200 inmates.

Also, the Department has testified in favor of S. 1422, legislation which would permit GSA to donate Federal surplus properties to States and localities free of charge for use as correctional facilities and sites. We anticipate our surplus properties program will have a major beneficial impact on State and local corrections as more transfers are effected.

With regard to S. 1597, S. 1597 would establish a corporation for prison industries for the purpose of improving the prison industries program by involving private industries, promoting prison stability, securing the contribution of inmates for the American industrial productivity, increasing the opportunities for inmates to obtain employment, reducing the cost of prison operations, and removing restrictions on the sale and transportation of prison-made goods.

In view of our recent experience with prison programs, we believe that a federally funded corporation of the kind proposed in 1597 is unnecessary. First, much of what the corporation would be authorized to do is or can be done using existing resources and authority.

Second, it is not at all clear precisely what tangible advantage a nonprofit corporation would offer and whether any advantage identified would offset some rather obvious disadvantage; for example, increased cost to the taxpayer and additional bureaucracy.

Third, we believe the primary responsibility for encouraging prison industries in State prisons should reside with State government and not the Federal Government. In this regard, S. 1597 appears to contemplate an expanded role for the Federal Government.

Fourth, the bill authorizes to be appropriated for the operation of the corporation \$2.5 million over a 3-year period beginning in fiscal year 1982. Although this is a relatively small amount, in a time of fiscal austerity when the President is attempting to bring growth of Federal spending under control, any new expenditures can be justified only upon a showing they are urgently needed, and they will achieve results.

In this instance the need for the corporation which S. 1597 proposes is very much open to question, while the benefits that would result are somewhat speculative.

Finally, although the bill seeks Federal funding for the corporation for a 3-year period, there is no assurance whatsoever that additional Federal support would not be needed after the expiration of the three years.

Lastly, with regard to S. 1690, S. 1690 requires States to assure that prisoners have a marketable job skill and basic literacy before releasing them on parole. The Department of Justice recommends against enactment of this legislation. Our own experience is that a rehabilitative goal such as those this bill endorses cannot be co-

erced. Vocational programs, literacy training and other rehabilitative opportunities can and should be made abundantly available to prisoners within budgetary constraints.

Counseling can help inmates to choose appropriate programs and to persevere in them despite the varieties of obstacles that confinement presents—peer pressure, for example. Nevertheless, the successful communication of vocational skills or basic skills of literacy depends first of all on the prisoner's ability to be trained—not everyone is trainable—and second, on the trainable inmate's commitment to the program undertaken.

Noncoercive optional programing is what is offered in Federal institutions with a rate of participation that compares favorably with rates achieved under prior mandatory schemes. We do not believe we can recommend that States adopt a policy which conflicts with our own experience and the results of our research.

In conclusion, we appreciate the opportunity to comment on the three bills presented before the subcommittee. We look forward to working with you in devising a sound approach to the pressing problems faced by State and local corrections. And I would be pleased to answer questions, Mr. Chairman.

Senator MATHIAS. Thank you, Mr. Harris.

First, let me ask you this. We expect to have witnesses from the American Civil Liberties Union this morning, and I anticipate that they will draw some attention to the National Institute of Justice study on American prisons and jails.

Now, what is your reaction to the claim that that study will find no evidence that the use of prisons or incarceration has any effect on the crime rate?

Mr. HARRIS. To put it most simply, Mr. Chairman, I would reject that hypothesis.

Senator MATHIAS. You reject the hypothesis or you reject the fact that that is what the study says?

Mr. HARRIS. I used the word "hypothesis" because I have some problems with the methodology in that study, and I would not accept its conclusions.

Senator MATHIAS. But is that what the study says?

Mr. HARRIS. Oh, yes. That is what the study says, absolutely. We believe that incarceration does have an effect on crime. And as you know from prior testimony, it is my view that it is not so much the length of the term of incarceration but the fact that it swiftly and certainly will follow the commission of the crime after apprehension.

Senator MATHIAS. Of course, one of the purposes of incarceration as we presently view it is it provides an opportunity for rehabilitation, not merely the punitive aspect but it is a period of rehabilitative treatment. And one of the methods of rehabilitation we have employed in this country in recent years is the idea of teaching certain crafts, certain skills, certain marketable, employable talents.

Last month when you were with us you spoke about the recommendation for amending the Vocational Education Act to make it clear that funds under the program can be extended for vocational education in correctional institutions. And the Attorney General

when he came to see us recently said that legislation along this line is in the process of being drafted.

Now, Senator Specter, a member of the committee, has some ideas along this line that are embodied in S. 1690, and I assume that you are making a counter offer in effect to 1690, or you intend to make a counter offer.

Mr. HARRIS. I think that that is a fair characterization of the result of where we stand. It should be clear we have no quarrel with the notion encompassed in the bill that if you can give people incarcerated basic job skills and basic literacy, you have much less chance of seeing them again in the criminal justice system. And the objective is one that we share.

We think that the way to do it is the way that you just mentioned, namely through making it clear that Vocational Education Act funds can be used for these purposes.

Senator MATHIAS. Mr. Harris, I know you do not prepare the departmental budget, and even the Attorney General does not have full control of funding levels for the various programs that are conducted by the Department of Justice. But how can you possibly justify what you have said, what the Attorney General has said, and what the Task Force on Violent Crime said with the proposal to reduce the Bureau of Prisons budget by 6.4 percent?

Ought not the movement to be exactly in the opposite direction?

Mr. HARRIS. Mr. Chairman, the only answer I can give you is that the same argument is made to us in other contexts with regard to almost every other aspect of the budget; for example, DEA, the FBI, the number of U.S. attorneys.

Senator MATHIAS. No. We will have those arguments later, I am sure, one by one. But the one we have right now is that you are here telling us about the need for incarceration, the need for greater training, greater rehabilitation, and unless you use mirrors, how are you going to make this greater effort and reduce the budget?

Mr. HARRIS. It is fair to say that the Bureau of Prisons is in far better shape than almost any State correctional system in this country. Now, that does not mean to say that we have excess.

Senator MATHIAS. From the testimony of Governor Thompson this morning, the State systems are all in chaos, so that is not saying very much.

Mr. HARRIS. The Bureau of Prisons is not in chaos. It is what I would consider to be a model program. That is not to say those cuts will not be difficult to digest; they will be.

What I mean to leave you with is that the principal reason that the correctional systems in this country are under the kind of scrutiny they are and the reason for these hearings is the state of State and local prison and jail systems, not the Federal system. The Federal system is far and away a model system compared to most States.

Senator MATHIAS. I personally am opposed to warehousing human beings. If the sovereign takes control of a human and puts him in storage and does nothing more, I think that is a terrible waste. It is a brutal act.

But if you are going to assume control of the lives and destinies of human beings, it seems to me you have to be prepared to do the

essential supplementary acts of rehabilitation. And I know of no way to do that on the cheap, and I do not think we can talk about doing those things if we are not prepared to go forward with the programs.

So I just hope the Department will look very, very closely at this, and there is no point in having a lot of rhetoric about it if we are not going to do it. And if we are going to cut the budget, we are not going to do it. And I think that is just the commonsense of it.

But let me ask you this question. The subject has come up of regional prisons. Is the Institute going to look at regional prisons as a possibility?

Mr. HARRIS. One of the task force recommendations was that this concept of regional prisons be studied, and I do not know of specific plans to do that. I expect it will be done. I would like to tell you, though, of some related efforts that the Bureau of Prisons and the National Institute of Corrections are making.

They are beginning a program called a model correctional facilities program which has three parts to it. One, they are going to publish a manual called "Guidelines for Planning and Design of Correctional Facilities," which will give aid to the States and localities in the planning of facilities.

They are also going to survey prisons and determine which in this country represent state of the art in correctional facilities, and write them up, and try to disseminate information so that State and local systems know what works and what does not.

And lastly, as a part of this model correctional facilities program, which is just one step they are taking, they are going to sponsor a national competition on correctional facility design with one of the architectural groups in this country, and try and develop, as per the task force recommendations, model designs which can be replicated to try and improve things.

We are taking small steps, I recognize this, and one step does not answer the present problems; but within the budget constraints we are going to do what we can.

Senator MATHIAS. Well, I appreciate that observation, and I do not mean to press you. Again, I say I am not holding you responsible for the budget constraints, but I think the Department must be aware that it does not do any good to beat our breasts over these problems and then renounce the way to address them in some practical way.

But I would hope that if you get to a study of the regional systems—and I recommend you do, and I urge you to—that you look at the bill I introduced in 1977 on this subject, because it has some background information which may be helpful to you.

Mr. HARRIS. Thank you.

[The prepared statement of Mr. Harris follows:]

PREPARED STATEMENT OF JEFFREY HARRIS

Mr. Chairman and Members of the Subcommittee:

Thank you for the opportunity to offer to you the views of the Department of Justice on S. 186, a bill to establish a federal program of assistance to state and local criminal justice agencies for the planning and construction of criminal justice facilities. You have also asked for the Department's position on two related bills -- S. 1597, to establish a corporation for prison industries, and S. 1690, to assure that prisoners have a marketable job skill and basic literacy before being released on parole.

S. 186

S. 186 would establish a Criminal Justice Facilities Administration in the Department of Justice, headed by a presidentially appointed administrator. This entity would be authorized to make grants to states of \$6.5 billion for the period from October 1, 1982, until September 30, 1988, to acquire, build, modernize and equip criminal justice facilities, such as prisons, jails, courthouses, police stations and sheriffs' offices.

The legislation establishes a formula for allocation of funds to the states and territories. The allocation to the states is based upon population, as well as effort and law enforcement activity in the state. In order to receive funds from the allocation, a state would be required to submit a plan meeting 19 specified requirements, and the plan would have to be updated annually. The Criminal Justice Facilities Administration would have to approve state plans, determining that the plan "contributes to the encouragement of advanced practices in the administration of criminal justice within the state." The legislation would also provide some funds not subject to the

allocations which the Criminal Justice Facilities Administration could utilize for demonstration grants. This legislation would also establish a clearinghouse to collect and disseminate information concerning the construction and modernization of criminal justice facilities.

S. 186 would also grant authority to the Secretary of Treasury to subsidize the interest on state and local bond issues for criminal justice facilities so that the rate of interest to the issuer would be brought down to 5 percent per annum. The interest subsidies are not limited to facilities that are part of an approved plan. The legislation would authorize such funds as may be necessary to provide the interest rate subsidy and does not place a dollar limit on the subsidies.

It is widely recognized that the many state and local detention and correction facilities which fail to provide a safe and humane environment represent one of the major problems faced by state and local law enforcement authorities. Many jurisdictions have been faced with a revolving door syndrome as they are forced, sometimes by federal court order, to release prisoners before their sentences have been completed in order to make space for those newly sentenced and on their way to prison.

The statistics of prison conditions illustrate the problems. More than half of all state prisoners are in maximum security facilities, which typically are old, fortress-like institutions with cells stacked like cages. Facilities built before 1925 house 43 percent of prisoners. Department of Justice standards for prison cells call for 60 square feet per prisoner, but 70 percent of prison cells fall short. Providing a safe environment for prisoners is also a major problem that is compounded by the aging condition of the facilities. The size of facilities, the inability to separate offenders, and the absence of effective locking devices contribute to these safety problems. Where kitchen and bathroom facilities are antiquated or overwhelmed by the number of inmates, the ability to provide a humane

environment is seriously impaired. Courts have declared 26 state systems or major institutions as failing to meet constitutional requirements.

While there is a need for funds to replace or renovate outmoded and substandard facilities, the Department of Justice opposes S. 186. This is an era when government must recognize the limitation to its fiscal resources. Responsibility for, and control over, construction of state and local law enforcement facilities most properly resides in the state and local governments. The federal government should accept the funding role only when its responsibility is clear and there is no other logical choice. While we are sympathetic to the goals of S. 186, the Department has concluded, after careful deliberation, that the substantial expenditures that S. 186 would require cannot be justified in terms of current budgetary goals and objectives.

Because the Department is keenly aware of the problems faced by state and local correctional authorities, we are firmly committed to finding other methods of providing effective support and assistance. Among these, is the Department's surplus properties program. As a result of a recommendation of the Attorney General's Task Force on Violent Crime, we have begun a program designed to facilitate the transfer of surplus federal properties to states and localities for use as prisons and jails. The Attorney General has established a clearinghouse within the Bureau of Prisons to collect and disseminate information on suitable properties. With the cooperation of the General Services Administration, our program has already resulted in the lease of an abandoned Air Force radar station to New York State for its use as a medium security facility for 200 inmates. We expect that, within the near future, a similar facility will be made available to Santa Clara County in California to relieve the critical overcrowding in the county's main jail. Also, the Department has testified in favor of S. 1422, legislation which would permit GSA to donate surplus properties to states and

localities free of charge for use as correctional facilities and sites. We anticipate that our surplus properties program will have a major beneficial impact on state and local corrections as more transfers are effected.

Aside from the Department's general opposition to S. 186 based on the overriding need for fiscal austerity, we would like to address a few specific problems with the legislation.

We strongly oppose the establishment of a separate administration within the Department of Justice to allocate funds under this bill. The existing structure already in place within the Department is quite adequate to administer this program. We see absolutely no need to create another bureaucracy with its attendant regulations and duplicative functions.

Recent legislation provides funding for projects designed to provide alternatives to pre-trial detention and post-trial incarceration for both juveniles and adults in appropriate cases. The Department supports this approach. S. 186, however, contains no provision requiring the states to devise alternatives to incarceration as part of their criminal justice plans.

In addition, S. 186 does not provide any enforcement scheme for civil actions by the Justice Department to enforce the terms of its grant contracts. Common law contract remedies, including specific performance, should be available.

We also recommend against enactment of the provision for subsidizing interest costs incurred by state and local governments. This provision would contribute to the overall federal debt management problems, contains no control on cost, and does not limit the expenditure to projects for which a need has been established.

S. 1597

S. 1597 would establish a corporation for prison industries with the purposes of improving prison industries programs by

involving private industry, promoting prison stability, securing the contribution of inmates to American industrial productivity, increasing the opportunity for inmates to obtain employment, reducing the cost of prison operations, and removing restrictions on the sale and transportation of prison-made goods. For the reasons stated below, this Administration opposes S. 1597.

This legislation would establish a non-profit corporation, which would not be an agency or establishment of the United States government, to administer and implement the bill. Appropriations would be authorized beginning with \$750,000 for each of the years 1982, 1983 and 1984. Among the powers of the corporation would be the obtaining of grants and making of contracts; awarding financial assistance by grant, contract, cooperative agreement, or loan; establishing a national clearinghouse exchange of information; collecting and disseminating information; and providing technical assistance. Furthermore, the corporation would have the power to exempt prison industry projects from restrictions on the interstate transportation of prison-made goods (18 U.S.C. 1761(a)), use of convict labor in performing contracts for agencies of the United States (49 Stat. 2036) and State laws governing prison-made property (49 U.S.C. 11507), provided these projects meet the requirements stipulated for prison industry pilot projects designated by the Law Enforcement Assistance Administration (LEAA) under 18 U.S.C. 1761(c).

S. 1597 follows three successful Department of Justice prison industry programs through the Law Enforcement Assistance Administration. The first, which originated in 1974, was designed to establish a conceptual model for demonstrating methods of managing prison industry operations with private industry expertise. The second phase of the program sought to apply this model in seven states: Connecticut, Illinois, Minnesota, Iowa, South Carolina, Colorado, and Washington. Two program assessments of these demonstration models were conducted.

One assessment explored the economic viability of the model, and the second examined the impact of the program on the institution and the inmate employees. Both assessments concluded that the program was effective in achieving the designed objectives.

The third and most recent LEAA program was mandated by Section 827 of the Justice System Improvement Act of 1979, Pub. L. 96-157, 18 U.S.C. 1761(c). This section directed LEAA to certify not more than seven pilot projects that wedded prison labor and private industry. Certified projects were to be exempt from federal prohibitions against placing prisoner-made goods in interstate commerce (18 U.S.C. 1761(a)), and selling prisoner-made goods to the government (41 U.S.C. 35). LEAA has already certified two projects, in Kansas and Minnesota, and has recently received a number of applications for the remaining five places in the program. This program provides no federal financial assistance to the certified states.

In view of our recent experience with prison industry programs, we believe that a federally funded corporation of the kind proposed by S. 1597 is unnecessary. First, the bill would fragment federal responsibility in this area. Attached administratively to the Bureau of Prisons is the National Institute of Corrections (NIC), created in 1974 to assist state and local corrections. NIC is governed by a non-partisan 16 member advisory board, and is administered by a Director appointed by the Attorney General. It is already in a leadership role in the area of prison industry programs. NIC has made hundreds of grants to state and local correctional agencies, organizations and individuals for training and staff development, technical assistance projects, research and evaluation, policy formulation, and clearinghouse activities. Thus, much of what the corporation would be authorized to do is or can be done using existing resources and authorities. Second, it is not at all clear precisely what tangible advantage a non-profit corporation would offer and whether any advantage identified would offset

some rather obvious disadvantages (e.g., increased costs to the taxpayer and additional bureaucracy). Third, we believe the primary responsibility for encouraging prison industries in state prisons should reside with state governments and not the federal government. In this regard, S. 1597 appears to contemplate an expanded role for the federal government. Fourth, the bill authorizes to be appropriated for the operation of the corporation \$2.25 million over a three-year period beginning with Fiscal Year 1982. Although this is a relatively small amount, in a time of fiscal austerity, when the President is attempting to bring the growth of federal spending under control, any new expenditures can be justified only upon showing that it is urgently needed and that it will achieve results. In this instance, the need for the corporation which S. 1597 proposes is very much open to question, while the benefits that would result--if any--are somewhat speculative. Finally, although the bill seeks federal funding for the corporation for a three-year period only, there is no assurance whatsoever that additional federal support would not be needed after expiration of the initial three years.

S. 1690

S. 1690 requires states to assure that prisoners have a marketable job skill and basic literacy before releasing them on parole. For the reasons stated below, the Department of Justice recommends against enactment of this legislation.

We, of course, recognize the value of the basic purpose of the bill -- to teach marketable job skills and basic literacy to incarcerated individuals who do not have them on entering prison. We would like to see this purpose achieved. However, the mechanism which S. 1690 would establish seems seriously flawed. Under this bill, states risk forfeiture of eligibility for federal assistance which the Attorney General's Task Force on

Violent Crime found to be essential to their ability to meet the challenge of contemporary corrections. Unless each state meets the obligation imposed by this federal law and conforms its standards to federal definitions of significant concepts, the risk will become reality.

Our own experience, supported by research and reflected in standards adopted by this Department and by professional organizations, such as the American Correctional Association, and the American Bar Association, is that rehabilitative goals such as the ones this bill endorses cannot be coerced. Vocational programs, literacy training, and other rehabilitative opportunities can be, and should be, made abundantly available to prisoners within budget constraints. Counseling can help inmates to choose appropriate programs and to persevere in them despite the varieties of obstacles confinement presents -- peer pressure, for example. Nevertheless, the successful communication of vocational skills or basic skills of literacy depends first of all on the prisoner's ability to be trained -- not everyone is trainable -- and, secondly, on the trainable inmate's commitment to the program undertaken. Non-coercive, optional programming is what is offered in federal institutions -- with a rate of participation that compares favorably with rates achieved under prior mandatory schemes. We do not believe that we can recommend that the states adopt a policy which conflicts with our experience and with the results of our research.

We are also concerned that the bill would establish a new area of federal regulation. The composition of the advisory council the bill proposes to establish underscores its federal nature: the representatives of the states, six in all, are chosen not by the states but by the Attorney General. While the goals of the bill are desirable, we think the states are sensitive to these goals and will be able to implement programs and projects to achieve them. To preempt these state initiatives and impose a uniform federal solution would be inappropriate,

given the diversity of the states and the inmate populations they must accommodate.

A related concern of the Department's focuses on our reluctance to intrude so pervasively on state parole determinations. Statutes governing parole, or release on determinate sentences in those states which have eliminated parole, vary from state to state, as the various legislatures have enacted provisions they deemed to be suitable. The effect of the mandate in Section 1 of the proposed legislation, " . . . the parole authority shall not release a prisoner sentenced under the laws of the State to a term of two years or more prior to the expiration of his sentence unless the State has met such obligation," would tend to relegate state-determined priorities, such as an inmate's dangerousness, to a position behind this federally-defined need. The powerlessness of a state to meet the obligation the bill imposes upon it, unless the prisoner is both able and willing to acquire the mandated skills, makes the legislation undesirable from the point of view of comity between the federal government and the several states.

Finally, the United States Parole Commission advises that, while the purposes of the bill are sound, the pre-conditions to parole that the bill would impose might lead to incarcerating felons for a period beyond normal safe release time, thereby contributing to prison overcrowding.

Conclusion

We appreciate this opportunity to comment on the three bills presently before this Subcommittee. We look forward to working with you in devising a sound approach to the pressing problems faced by state and local corrections. I will be happy to answer any questions you may have.

Senator MATHIAS. Our next panel, two distinguished attorneys general, the attorney general of Maryland, whose office I believe is one of the oldest in the Western Hemisphere, an office which has been in continuous existence since the beginning of the 17th century, the Honorable Stephen Sachs—we are very happy to have him here—and the Honorable Robert Stephan, the attorney general of Kansas. They appear as a panel.

STATEMENTS OF STEPHEN H. SACHS, ATTORNEY GENERAL OF MARYLAND, AND ROBERT T. STEPHAN, ATTORNEY GENERAL OF KANSAS

Mr. STEPHAN. Thank you.

Senator MATHIAS. As a former assistant attorney general, I sit here in awe and deepest respect.

Mr. STEPHAN. Mr. Chairman, I am in awe. I did not know Steve was that old. I am amazed that his office has been running that long. [Laughter.]

Senator MATHIAS. Well, it is the quality of the water in Maryland.

Mr. SACHS. Mr. Chairman, I appreciate those kind remarks, and I just want to say if you ever want to come back to your old job, it is there waiting for you. [Laughter.]

Senator MATHIAS. That gives me a great sense of security.

Mr. SACHS. Mr. Chairman, is there a schedule? The schedule I got had my name on it first, but I do not mean to preempt or jump ahead of my good friend from Kansas who has come from farther today.

Mr. STEPHAN. The chairman is your Senator. Please go ahead.

Mr. SACHS. Mr. Chairman, I am here, as is Attorney General Stephan, on behalf of the National Association of Attorney Generals, which has endorsed, I believe unanimously, the Senate bill 186.

There is a prepared statement that I have submitted to the subcommittee, and I certainly will not repeat it.

Senator MATHIAS. Both of your statements will appear in full in the record.

Mr. SACHS. Thank you very much, Mr. Chairman.

So I would like, if I may, to speak somewhat personally on behalf of my State with respect to the problems which Senate bill 186 addresses.

I come here with a certain sense of irony. As you will recall, I was last before the subcommittee opposing proposals to abolish the exclusionary rule. I think as this subcommittee knows, I feel very strongly that the process of law enforcement should be fair.

Senator MATHIAS. I regret to say that developments since you were here have not been positive in that respect.

Mr. SACHS. I know, Mr. Chairman, but we live in hope, and we will continue to persevere.

In any case, I also share the views of the Chief Justice who has made the point that what an irony it is that we concern ourselves so with the procedural safeguards of the accused and concern ourselves so with the protections we afford those in the criminal justice process until the moment of conviction, at which point we effectively warehouse him and put him out of sight and ignore him, and indeed remand him to a criminal justice system, to a correc-

tions system which almost guarantees, statistically speaking, that he will come out worse than he went in.

It has been observed that if a Martian were to visit the United States and observe its prison system, he might well go back to his planet and tell his leader that he has seen in the United States a system of crime-manufacturing factories called prisons, and that they are all in full production.

I believe, having watched the criminal justice system operate for just about 20 years, that the purposes, and the content, and most importantly of all, the funds involved in Senate bill 186 are the most significant potential improvement in the administration of criminal justice in this country that we have seen in many decades.

It would not only relieve the present crisis about which the subcommittee has already heard so much, it would not only permit the increased incarceration, the certain incarceration of those who must be separated from society if society is to be safe, but it would also for that very reason, Mr. Chairman, provide the flexibility; it would provide the community atmosphere; it would provide the kind of possibility for precisely the kind of experimentation, the kind of half measures, the kind of efforts to try alternatives to incarceration that quite bluntly, Mr. Chairman, in the present climate of fear, concern, and outrage about crime are not taking place because of our preoccupations with the crisis we are in.

So to those who say if you build, you just fill them up, and if you build all you do is make impossible alternatives and more measured measures to deal with crime, I say they have their priorities reversed. Unless we build, unless we are able to demonstrate we can solve the safety problem, we will not have the ability to experiment and to do the kinds of experimentation which I happen to think are extremely necessary.

I spoke yesterday to a group of correctional officials in our State and called for some pilot programs, experimentation of victim restitution by first-time nonviolent offenders, a program which is beginning to take off around the country and seems to have some promising results. It has the advantage, among other things, of wedding the two forgotten classes—the offender, whom we warehouse and forget, and the victim whom we too often forget, and perhaps having the one pay back the other.

Those kinds of things, though, cannot really take place unless we have a secure base against which to act. And it is because of these feelings—and I certainly am not now speaking for any organization, but speaking as forcefully as I know how for myself—that I hear with enormous chagrin the failure of this administration which talks so tough about crime, the failure of this administration to endorse this opportunity for Federal assistance in an area which has gotten precious little Federal assistance over the years—corrections—and that needs it so badly.

One is left with the sad impression that the administration is more concerned with its posture and its rhetoric with respect to the crime problem than it is with its reality. And I hope we ought not conclude from this message and from the budget cut with respect to the Bureau of Prisons that the chairman has pointed out, I hope we are not to conclude that the administration feels that by speeches and committees and by a token offering of surplus

property here and there, and indeed by tinkering with constitutional rights, we will solve the crime problem in this country. We will not, and unless we take the kinds of steps that Senator Dole's 186 represents, I do not think we will be able to meet and master the problem.

You have heard from others, and we have in our prepared statement a recitation of the dreary and sad statistics. "Archaic" is not too strong a word to describe much of the prison and jail construction in my own State. You will be interested to know as an historian of our State, Mr. Chairman, that the Maryland Penitentiary, which still stands and which is still in use, was constructed in 1811, three years before "The Star-Spangled Banner" was written only a couple of miles away. We have almost half, I think it is, of our local jails which were constructed pre-1900, and the Baltimore City Jail was constructed pre-Civil War.

Of course there have been additions. Of course there have been some improvements. But when I point out to you that the Maryland Penitentiary, which is rated at some 990 capacity, now has 1,600 prisoners in it, it will give you a not very bad idea of the kind of problems that we have.

You, Mr. Chairman, once made a speech, forgotten perhaps by you, but there are those of us who remember it.

Senator MATHIAS. Ah, that is what worries me. [Laughter.]

Mr. SACHS. In which you said that a hyena in the Baltimore Zoo had more room to roam and more area of freedom than prisoners in most institutions in our State and in our country. You were right then, and I am sad to tell you that you are perhaps even more right today.

Let me echo, if I may, just briefly in Maryland terms what Governor Thompson told the subcommittee earlier. The State of Maryland is emphatically at work in trying to solve this problem. We have two facilities in just the last 2 years that have been constructed: one in Howard County and one in Baltimore City. Two facilities are in the active planning stages: a maximum facility of some 230 prisoners in Baltimore and a 720 minimum security facility in Hagerstown. On the local jail front, two new ones opened in the last 3 years, four will open next year, and two more broke ground and will be under construction only shortly.

But the point I am trying to make, Mr. Chairman, is we cannot do the job alone. To give you some idea of the magnitude of the problem, for the fiscal year 1983 some 33½ percent of Maryland's capital budget is dedicated to corrections. Projected for the year 1985 some 25 percent of the capital budget is dedicated to corrections. And that does not include the State's 50-50 participation in local jail construction.

These are staggering figures when the committee will consider the fact that not only does that kind of money come from hospitals and schools and other projects, it also loads up the debt affordability aspects of our borrowing capacity and affects the State's ability to borrow in the marketplace as it might otherwise be able to.

Mr. Chairman, the crisis in our prisons, which has been well documented, is very, very real. I was very pleased to hear Governor Thompson, the distinguished Governor of Illinois and cochairman of the Attorney General's Task Force on Violent Crime, call that

commission's and that task force's proposal, the centerpiece of that proposal, the most important of the 60-some recommendations that he made.

And again, I must express my chagrin that notwithstanding that central recommendation from the distinguished task force, that the administration has not seen fit to commit the right kind of resources to it.

The Governor did not exaggerate, in my judgment, when he equated the problem we face in this country today with the problems we face as a matter of defense against those outside our country. I suggest, with all respect but with great force, that we ought to weigh in the same scale the question of how we handle corrections in this country—and how we protect our citizens from deprivations within our shores—we ought to weigh them on the same scale as we weigh what we spend for highways, and what we spend for B-1 bombers, and what we spend for many of the other things we spend to protect ourselves and enhance the quality of life.

I know of no single greater problem facing the American people within these shores than the problem of crime. The States are doing much, but they cannot do it all. And we respectfully submit that the bill proposed by Senator Dole is the kind of commitment that is essential if we are to master the problem.

Thank you very much, Mr. Mathias.

Senator MATHIAS. The attorney general of Kansas.

Mr. STEPHAN. Thank you.

Senator MATHIAS. Senator Dole.

Senator DOLE. Let me introduce Bob Stephan, our attorney general. We will also hear from the Kansas director of corrections, Mr. McManus, later on. One is here supporting my bill, and one opposes it.

Mr. STEPHAN. I talked to Mr. McManus. I do not think he opposes all of it.

Senator DOLE. I think that indicates we have diversity in our State. I have a statement, Mr. Chairman, I would like to make a part of the hearing record.

I am pleased to hear from the attorney general. We now have the first bell which means there is a vote in progress, and we have about 10 minutes.

Mr. STEPHAN. I will be very brief.

Senator DOLE. Take all the time you want.

Mr. STEPHAN. You will not be here, right? [Laughter.]

Well, as stated by Attorney General Sachs, the National Association of Attorneys General supports Senate bill 186. And although I am somewhat prejudiced since the bill is Senator Dole's bill, it certainly focuses upon problems which I think most of us agree: Crime is a national problem; that deterring crime is a national objective; that most State penal institutions are overcrowded; that overcrowding gives rise to costly litigation, premature parole, violence, less opportunity for rehabilitation, and security problems.

Most States are just not fiscally able to rectify these inadequate facilities. I think Senate bill 186 can do more to respond to these problems than all of the civil rights cases, court orders, State legislative or gubernatorial pronouncements.

Of course, there is no secret about the fact that crime is increasing at an alarming rate, and in particular violent crime has been on a tremendous increase. In Kansas violent crimes include murder, nonnegligent manslaughter, rape, aggravated assault and robbery. In the period from 1971 to 1980 they increased by approximately 91 percent, and this increase is true throughout the country.

As a result of tremendous increases in violent crime, it naturally follows that more individuals will be incarcerated for these types of crime. We have the problems of overcrowding in Kansas. The Kansas Department of Corrections records show that in 1974 the average daily count of inmates was 1,415. Thus far in 1981 the average count of inmates has been 2,432 on any given day. Our State correctional facilities are confining 2,650 people, although the current bed capacity is 2,606.

The other problem other than overcrowding is of course the fact that most penal institutions in the United States are very old. Attorney General Sachs' is 1811. Our principal institution had construction commence in 1864. Kansas is now in the process of a \$1.7 million renovation project. The Kansas Legislature in session this year has appropriated \$200,000 for preliminary planning for a proposed 300-bed medium security institution. The proposed cost for the construction of this facility as well as renovation costs runs approximately \$15.3 million.

The cost of inadequate facilities has been tremendous. Colorado has expended in the area of \$1 million on litigation concerning its penal facilities. Texas is involved in a lawsuit brought by eight prison inmates. That State has spent over \$1 million in court costs and attorney fees to date. And the U.S. Department of Justice, which here today opposed this bill, is involved in that case. It is estimated that they will spend approximately \$25,000 on exhibits and over \$2 million in total prosecution costs.

Outdated facilities certainly hurt the chances of rehabilitation and cause violent and nonviolent offenders to be incarcerated together. The inadequate facilities do not properly protect the public.

I think this is a national problem. I, along with Attorney General Sachs, was disappointed to hear the Department of Justice representative state that they felt this was purely a State problem. At least that is what I got from the testimony. If it were a State problem, I do not know why they are involved in so much litigation brought by prisoners all over the United States. It costs the Federal Government money, and it costs the States money. And for two centuries the States have literally borne the entire burden of financing the construction and upkeep of criminal justice facilities.

The Congress has led the way in roads, air, water and personal liberties throughout this country. Certainly crime being a national problem, the Congress should take the lead in helping to provide adequate criminal justice facilities of all kinds.

Change will come. It would be better if that change would come through the legislative process and not through court mandate.

Congress has the best means of dispensing the money, and the best part of Senate bill 186 is it deals not only with prison facilities but for a wide range of criminal justice activities. Those facilities include probation and parole facilities, juveniles receiving care and

treatment, control of drug addiction, community-based corrections, among others.

Senate bill 186 is a wise and timely piece of legislation. It can help to prevent violence, to rehabilitate, to cure and to prevent suffering.

Thank you very much for this opportunity to speak on behalf of the National Association of Attorneys General and from my position as attorney general of the State of Kansas.

Senator DOLE. Mr. Stephan, I appreciate very much your testimony. Your entire statement has been made a part of the record. And we have been suggesting to the administration from time to time that this should be a matter of some priority, as you suggest in your statement. There is not much of a constituency out there, so sometimes it is easy to sweep this problem away. But as I understand, they indicated this morning they do oppose S. 186 based upon economic grounds more than anything. Hopefully, that will change in the foreseeable future, and those of us who have an interest in construction and what we have outlined—not what just I have outlined but many others on this committee and certainly these two witnesses—we intend to pursue this. If in fact we do not have the funds now, we hope we will have funds next year, because it is a problem; and as you indicated, it is an increasing problem.

Again, it is not an effort of the Federal Government to move in and bail out States who are reluctant to spend money. I think, as you have indicated, we can determine priorities. We can better collect it. I think there is a Federal responsibility.

Mr. STEPHAN. Senator Dole, may I interject one comment?

Senator DOLE. I think for the record Senator Mathias has asked permission to submit questions to the witnesses. I will make the same request of these two witnesses, in writing, as we develop the hearing record. Go ahead.

Mr. STEPHAN. Just with regard to your statement, Senator Dole, I think you are to be commended for this forward approach. There is not much of a constituency to support bills such as yours, and indeed, it is going to continue to be necessary to incarcerate individuals in penal institutions, and provisions should be made to see that those people are treated humanely, and that the best opportunities of rehabilitation are available.

And indeed, we do have a foreign enemy, but we have enemies within this country involved in criminal activity. And I would indeed suggest that we are in danger here at home from this tremendous increase in crime, and that should be given a great deal of consideration.

And I am certain that the proposal which has been submitted can be improved upon, modified, certain provisions deleted if necessary; but at least it occurred to us that we should focus on the real problem.

If you live around the Washington area you see enough of it on TV, the overcrowded jails in the District, Maryland, and Virginia. And it is not humane treatment in any sense of the word, and we have a responsibility. We cannot ignore it.

I want to commend both the witnesses for making the effort to be here. It is an effort. And if you will excuse me, I will run over

and vote. Senator Mathias should return about the time I depart, so we will stand in recess until he returns.

Mr. SACHS. Thank you, Senator.

Mr. STEPHAN. Thank you.

[A short recess was taken.]

Senator MATHIAS. The committee will come to order.

Gentlemen, at what stage were you when Senator Dole left? Had he propounded his questions?

Mr. SACHS. Mr. Chairman, I think he indicated he reserved the right to submit in writing, or the committee did, and he had no questions of either of us.

Senator MATHIAS. He does, I think, have some questions, and if he is delayed and unable to get back while you are still with us, we will submit those questions on behalf of Senator Dole and ask that you respond, either individually or on behalf of the association, as you see fit.

You referred, Mr. Sachs, in your testimony to the recommendation of \$2 billion in Federal assistance to the States for prison construction over the next 4 years. The Attorney General of the United States was before us recently, and he stated that the money just was not available to follow through on this recommendation, and instead he called our attention to another recommendation which was to transfer surplus Federal property and unused facilities for correctional purposes. He stressed that new low and medium security correction facilities could be generated in less time with less money by this procedure. But I think in fairness, he would agree that this was a short term, interim measure.

Now, let me ask each of you how this would affect your own States and how you think the association views that proposal.

Mr. SACHS. Well, Mr. Chairman, on that particular proposal I have no authority to speak for the National Association of Attorneys General, and I could only respond as an official of the State of Maryland.

We asked our corrections officials as to the present usability given our own State's budget constraints and priorities and alternatives for expenditures, including, as I indicated earlier, our present heavy commitment to correctional expenditures, whether or not there were any such property in Maryland of which we were presently aware that would have a potential immediate and manageable use. The answer we received so far was not at the present time, although the potential is acknowledged and perhaps there might be some such possible use. It is not enough to say we now have x number of acres with 17 dilapidated and deteriorating ex-barracks and be asked for that opportunity. It may be as much a dilemma and a problem as it is an opportunity.

I do not want to cheapen the suggestion of the Attorney General in that proposal, and there are some cases, I am sure, where it can be very valuable; so I do not mean to cheapen it or look askance at the idea entirely. But I must say—and now I know I speak for the commissioner, for the secretary of corrections and public safety in Maryland with whom I spoke yesterday, that it is just a woefully inadequate substitute, no substitute at all for the kind of financial commitment for the construction purposes, the flexible construction purposes represented by S. 186. And I think it simply would be

a mistake to consider them in the same scale when weighing their value. They are very different propositions.

If I may just take this one opportunity to drop a footnote, if I may, to what I had said earlier, it should be remembered as we talk about S. 186 that it is by no means inconsistent with programs, with alternatives to incarceration, as ironical and paradoxical as that may seem.

S. 186 is replete with charges with advanced thinking, et cetera, in corrections and I think contemplates precisely that kind of flexible approach that all of us think is necessary.

Mr. STEPHAN. I have been advised, Senator, that this matter will be on the agenda of the meeting of the National Association of Attorneys General in New Orleans on December 1. And as to Federal institutions themselves, I think you would have to take it on a piece-by-piece basis. I doubt that they are as magnificent as one would be led to believe by the statement of the prior witness.

Senator MATHIAS. The Attorney General said there were 500 Federal properties that had been targeted for possible transfer for correctional use. Do you know of any one? That would be an average of 10 per State. I have no way of knowing how they are geographically spread.

Mr. STEPHAN. You could lock up everybody.

Mr. SACHS. I do not know, Your Honor. These secondhand facilities, Mr. Chairman—and this is not a secondhand problem. This is a first class, front burner problem; and to treat it as something you give your leftovers to, this is not something Goodwill Industries can solve.

Senator MATHIAS. Neither of you have been approached by the Department of Justice on this kind of thing?

Mr. SACHS. I do not want to speak too fast about that, Mr. Chairman. I think I received a letter, and I think perhaps every Governor did, and attorney generals got copies—a notification of the opportunity or an announcement of the potential opportunity.

Senator MATHIAS. But it has not gotten beyond that stage?

Mr. SACHS. I am not aware that it has, no, sir.

Senator MATHIAS. We will make further inquiries here.

Let me ask each of you one further question. There is always a problem when you build something, then you have to run it. We are finding that out with the Federal highway system—9010, 8020, whatever it was. Now, year by year you have to maintain that highway.

What about the cost of running these Federal systems? Suppose the upfront money is forthcoming, notwithstanding the Attorney General's opinion that it is not. Suppose it is. Who will run these facilities? Are the States going to be able to absorb the operating costs, which could be very large?

I think when Attorney General Sachs was here before we discussed the comparative costs of keeping students in college and prisoners in jail, and it comes out a little more expensive to send a prisoner to jail than it does to send a child to Harvard. Who is going to pay for the cost of these facilities once they are built?

Mr. STEPHAN. I mentioned in my testimony that Kansas is in the process of planning a 300-bed facility, and once constructed, of

course, we are willing to assume that cost and that obligation. And I think we will be adequately prepared to maintain the institution.

It has always been my contention that you do not have to build every institution as a maximum security institution, but that many, many prisoners, estimated from 30 to 35 percent of the prisoners in Kansas, could be placed in a minimum security institution with a great deal less cost than is maintained in maximum security institutions.

Senator MATHIAS. Gentlemen, we are very grateful for your help today. I am sure we will be calling upon you for further help, and we will be forwarding to you the written questions which will be included in the record with your written answers.¹

Thank you very much.

Mr. SACHS. Thank you.

Mr. STEPHAN. Thank you, Senator.

[The prepared statements of Messrs. Sachs, with resolution, and Stephan follow:]

¹ See appendix, p. 444, 448.

PREPARED STATEMENT OF STEPHEN H. SACHS

My name is Stephen H. Sachs. I am the Attorney General of the State of Maryland. I have been a lawyer for twenty years and have spent just over half my professional career in public law enforcement as an Assistant United States Attorney for Maryland (1961-1964), United States Attorney for Maryland (1967-1970) and Attorney General since my election in 1978.

I am here on behalf of the National Association of Attorneys General in support of S. 186.

Today we are faced with a crisis in our nation's correctional facilities. Many of our state facilities are obsolete and decrepit. Forty-three percent of the prisoners in our state institutions are being housed in facilities built before 1925.

To make matters worse, our prisons are grossly overcrowded. In the ten years ending in 1978, the inmate population in this country jumped by almost two-thirds. Between 1978 and 1981, the number of state prisoners increased from 268,189 to 329,122. Prison construction has not kept pace with this increase.

The combination of these two factors, a burgeoning inmate population and antiquated facilities, has at times been lethal. We are not without examples.

This country has just lived through a decade marked by brutal and bloody symmetry; in 1971 forty-three died at the Attica Correctional Facility in what was later described by the New York State Special Commission on Attica as the "bloodiest one-day encounter between Americans since the Civil War". In 1980, thirty-three died at the New Mexico State Penitentiary in the most brutal and sadistic prison carnage in this country's history.

Senator Robert Dole introduced S.186 because he recognizes that the conditions which sparked these tragedies are not unique to New York and New Mexico. His words graphically describe the

problems facing almost all state correctional systems throughout the nation:

"... American prisons ... generally are underfunded, understaffed, and filled far beyond capacity. In some prisons two or more inmates are housed in single-man cells, bunks are lined up side-by-side in the dormitories and some men sleep on the floor because of the crowded conditions. Stabbings and rapes occur with garish frequency. Guards are ill paid. Medical treatment is inadequate. There are not enough prison jobs or classes so most of the prisoners are idle for hours on end.

This kind of overcrowding aggravates the long-time problem of ex-convicts committing new crimes. Dehumanizing, unsafe, unsanitary conditions can only serve to deter inmates from having any respect for the justice system." 127 CONG. REC. 11, S.429 (daily ed. Jan. 21, 1981) (remarks of Sen. Dole).

The National Association of Attorneys General supports the effort to address these problems through the passage of the "Criminal Justice Construction Reform Act", S.186. The bill provides for federal financial and technical assistance for the construction and modernization of state and local criminal justice facilities. The need for these funds is critical. The states simply do not have the funds to construct the number of facilities needed to eliminate overcrowding and the problems overcrowding causes.

Today 36 states, the District of Columbia, Puerto Rico, and the Virgin Islands are under existing court decrees declaring at least one major state facility unconstitutional or are involved in litigation involving overcrowding or conditions of confinement. And this tally does not include suits against local jails. States must comply with the law. New facilities must be built; ancient, crowded facilities must be closed down. But where do the states get the funds to construct these necessary facilities, when scarce state resources are already sorely overtaxed?

Although more than two-thirds of the states have proposed to

build or have under construction at least one major correctional facility, the Attorney General's Task Force on Violent Crime in its August 1981 Report stated that "[s]ome states have found the process so costly that they cannot complete their efforts or have vacant facilities because they cannot afford staffing and operation." The Task Force concluded that "it is clear that the financial burden on the states and counties to renovate or construct correctional institutions is extraordinary" and that "[federal] assistance leading to the replacement or renovation of outmoded or substandard correctional facilities is essential."

The National Association of Attorneys General agrees wholeheartedly with the Task Force. At its annual meeting, the Association offered its strong endorsement for S. 186 and similar legislation. A copy of the N.A.A.G. resolution is attached to this testimony. While offering this endorsement, the Association also suggests that the legislation mandate that the program Administrator emphasize correctional facilities, maximize State control over the design and implementation of state plans to the greatest extent possible, and provide for an appropriate state agency to submit the state plan.

I would like to add my personal support for this bill.

The majority of my professional life has been spent in the detection, apprehension and conviction of criminals. The chase has been worthwhile. The separation of chronic and violent offenders from society is a service to society and a process with which I am proud to be associated.

Yet, I feel a grave sense of failure when I examine our correctional system. As this subcommittee knows, I feel strongly that law enforcement must be scrupulously fair. But I share Chief Justice Burger's belief that:

"It is folly to establish a system of justice allowing each criminal defendant the most elaborate due process, free counsel and the most expensive trial known anywhere, and then to cast the guilty into nineteenth century penal institutions. To put people behind bars and do little or nothing to change them is to win the

battle, but to lose the war. It is wrong. It is expensive. It is stupid."

This sense of failure is compounded by the frustration that comes from knowing that new, modern, uncrowded facilities would help alleviate many of the problems of our prisons--the pervasive idleness and endemic violence that virtually guarantees that offenders return to the streets more dangerous to society than when they went in--but that state funds are not available to do the job.

Senator Dale Bumpers spoke of the consequences of placing prisoners in overcrowded facilities, when he endorsed S.186:

"...the exponential increase to the crime rate in this country demands that criminals, particularly the repeaters, be taken off the streets. I do not propose an argument here on the economic, social, and cultural reasons for crime--that is another subject, but I simply want to state what we all know, that we are bonding repeaters because we do not have any place to put them. We are paroling and commuting inmates prematurely in order to make room for the newly-sentenced criminals, and in order to comply with court orders to eliminate overcrowding.

"It is a revolving door and society is paying a very high, precious economic price--much greater than the cost of this bill--and a price in grief and fear which is incalculable in dollars." 127
CONG. REC. 18, S.889 (daily ed. Feb. 3, 1981)
(remarks of Sen. Bumpers)

Senator Bumpers is right. Incarceration must continue to be a necessary component of a comprehensive system of criminal justice sanctions. But, it must be more than mindless warehousing, for our own safety's sake. Overcrowding taxes the physical and personal resources of institutions. It makes the tasks of the correctional officer extremely difficult and dangerous. It complicates meal service, burdens sanitation and, most importantly, hobbles the maintenance of security. It sharply limits the opportunities for instruction, vocational training and recreation. In sum, all the support services which could make prisons do more than merely contain are overtaxed. Unless new facilities are built and staffed and programmed, our prisons will

never be other than what they are today--"graduate schools of crime".

Senator Bumpers spoke of Arkansas' efforts to construct new facilities and Arkansas' pressing need for money. I would like to share the Maryland experience with you, because it is one with which I am most familiar and one which, I believe, is similar to the experience across the nation.

Maryland's state and local correctional facilities are, on the whole, archaic. Construction has not kept pace with the burgeoning inmate population. Our governor and legislature have been faced with the enormous task of reversing the neglect of the past and are meeting this challenge.

Under their leadership, Maryland has begun to address the problem of ancient, overcrowded facilities by embarking on a program of construction and renovation. We are limited, however, by lack of funds. In the last two years, two modern State facilities, one in Baltimore City and one in Howard County, have been constructed. Additionally, two new state facilities are planned: a 250-bed maximum security facility in Baltimore, and a 720-bed minimum security facility in Hagerstown.

Much still must be done to improve our correctional system. Maryland is one of the 36 states embroiled in federal litigation involving overcrowding or conditions of confinement. Three Maryland state institutions and at least two local jails are under federal court orders.

Let me describe the problems we face. Two of our major State penal institutions were built in the 19th century. The oldest, the Maryland Penitentiary, was built in 1811--that's three years before Francis Scott Key wrote the "Star-Spangled Banner" during the Battle of Baltimore, one of the last battles of the War of 1812. The Penitentiary was intended to house around 400 inmates. In 1900, it was enlarged to accommodate 997 inmates, but has housed as many as 1,600 as a result of the population crunch.

Maintenance of security is difficult, increasing the risks of inmates assaults on officers and each other. Lighting is poor. Lines of sight are short. Programs are limited by the physical resources. The Maryland Penitentiary has no adequate indoor or outdoor recreation facility. A converted dining hall with ceilings too low for a basketball hoop serves as a gym.

Overcrowding exacerbates the limitations posed by outmoded physical plants. Normal activities such as meal service and moving inmates to and from programs have become major management problems.

All of Maryland's state institutions with the exception of our pre-release centers are populated above constructed capacity. On October 15th of this year, we had a "rate of capacity" of 6,799 inmates; we were housing 8,896. One week ago (November 12, 1981), we had an inmate population of 9,108. A year earlier (November 12, 1980), the population was 7,856.

The increase in population is not abating. In FY 80, we had 5,077 intakes and 5,495 releases from our system compared to 5,621 intakes and only 4,896 releases in FY 81. We took in 544 more individuals and released 599 less last year. It is not surprising, then, that despite consistent efforts over the last two years to end double celling in our system in compliance with federal court orders, we are currently almost 1,000 inmates over the court mandated cap.

Maryland's problems do not end with our state correctional system. In addition, we have twenty-four local jails, one in each county and one in Baltimore City. Nine of these jails were constructed prior to 1900, and another three were constructed in the first decade of this century. For example, our Baltimore City Jail is a patchwork facility. The oldest part still housing inmates was built prior to the Civil War.

Our local government officials have inherited these physically outmoded facilities. They are making every effort to

address and remedy the problems created by too many inmates in ancient facilities. However, given the extremely limited resources available to them, all the problems cannot be remedied at once and serious problems continue to exist.

Last month, a federal jury awarded \$1,000 to each inmate awaiting trial and \$500 to each convicted criminal who was incarcerated within the last four years in our Worcester County Jail. The case is still being contested, but the total judgment may approach \$2,000,000.

The inmates alleged that in August of 1980 there were 80 prisoners, but only 57 bunks; that it was as hot as 130 degrees inside; that ventilation was poor; that there was no exercise yard; that no inmates regularly got outside; that the jail provided no laundry service and only one clean sheet each week. They also alleged that at night when no guards watched, the inmates preyed upon each other: raping, beating, burning.

Although we have a few excellent local jails, fourteen of our twenty-four jails are overcrowded. Of the 4,200 incarcerated in the jails, nearly 2,300 more than half, are merely awaiting trial.

Like our State leaders, our local leaders have been grappling with the problems of overcrowding and outmoded facilities. New jails have been constructed in two counties during the last three years. Four will open within the next year. Two more have broken ground or are under construction. All these jails are built with 50/50 state and local funds. State officials report that two-thirds of the local jurisdictions are in the process of expansion, construction or renovation. They estimate that the State has only two-fifths of the amount needed to fund the State's 50% share of the costs of these projects.

There is no money available in our State to make up this large shortfall. The consequences of delaying new construction are immense. Inmates will continue to be housed in facilities

built in a different era for a different purpose for far fewer numbers. Public safety will continue to be in jeopardy.

This bill would help to alleviate Maryland's shortfall in funds for prison and jail construction. I would like to stress that this bill expressly forbids the use of funds under this act to supplant state or local funds. The federal funds must be used to increase the amounts that would, in absence of federal funds, be made available for construction and renovation of criminal justice facilities.

I wholeheartedly support this provision. The states do not wish to abrogate their responsibility to provide an effective correctional system, but we need help.

I urge the subcommittee to recommend passage of S.186. I fervently hope the present administration supports it wholeheartedly. An administration dedicated to fighting crime must realize that a strong, sound correctional policy is essential for strong, sound law enforcement. An effective correctional system fights crime and protects the public. But the states cannot build an effective system alone. We are and have been willing to do our share, but we need help.

NATIONAL ASSOCIATION OF ATTORNEYS GENERAL
ANNUAL MEETING
June 24-27, 1981
Jackson Hole, Wyoming

RESOLUTION

CRIMINAL JUSTICE CONSTRUCTION ACT

WHEREAS, criminal activity in the states continues to increase, and

WHEREAS, the physical plants of the institutions serving state and local criminal justice are becoming increasingly overloaded and obsolete; and

WHEREAS, a relatively small amount of state and local resources are available to modernize existing criminal justice facilities or construct new ones; and

WHEREAS, few federal dollars have been made available for the construction and improvement of state criminal justice facilities in contrast to federal assistance provided for other public institutions such as hospitals, sewage treatment systems, highways, airports, parks and public works of all kinds; and

WHEREAS, legislation has been introduced in Congress, S. 186 and H.R. 658, that would provide federal assistance to state and local criminal justice agencies for planning, construction and renovation of police headquarters, courthouses, prisons, jails, and other criminal justice facilities;

NOW, THEREFORE, BE IT RESOLVED that the National Association of Attorneys General supports S. 186, H.R. 658 and similar legislation, and urges that the legislation:

1. maximize state control over the design and implementation of state plans to the greatest extent possible;
2. mandate that the program administrator emphasize correctional facilities;
3. provide for an appropriate state agency to submit the state plan;

BE IT FURTHER RESOLVED that the General Counsel of this Association is authorized to make these views known to the Congress, the Administration and other appropriate individuals.

PREPARED STATEMENT OF ROBERT T. STEPHAN

Mr. Chairman, Members of the Committee:

Pursuant to Kansas law, the Attorney General is the chief law enforcement officer of the state and as such is charged with the enforcement of the state criminal code. One aspect of this charge which greatly concerns me, both as Attorney General and as a private citizen, is the incarceration of persons awaiting trial and convicted felons sentenced to our state correctional facilities. Because of these concerns I appreciate the opportunity to testify here today regarding THE CRIMINAL JUSTICE CONSTRUCTION REFORM ACT, U.S. Senate Bill No. 186. I appear before this committee in a dual capacity: First, as a representative of the law enforcement community of the State of Kansas; and second, as a spokesman for the National Association of Attorneys General which, in June 1981, resolved in support of S.186.

Certainly there are some general propositions regarding criminal justice facilities on which we all can agree: 1) Crime is a national problem and no state or its citizens are immune. 2) Deterring crime is a national objective and all states, to varying degrees, rely upon penal facilities for the protection of society and the enforcement of criminal laws. 3) State correctional facilities are bursting at the seams as an ever-increasing inmate population is serving ever-extending terms. 4) The overcrowding and attendant problems give rise to costly litigation, premature parole, violence and security problems. The present situation encourages only waste and tragedy. 5) Finally, many states are fiscally unable to rectify this deplorable circumstance within the foreseeable future, unless tax dollars collected by the federal government are specifically allocated to the construction of criminal justice facilities.

In my opinion Congress can do more to respond to these problems of the state prison systems by the enactment of S.186 than all the civil rights cases, court orders, state legislative or gubernatorial pronouncements and inmate protests combined. While no proponent of this bill is likely to urge the federal government to single-handedly remedy the ills of present prison facilities, it is leadership that is required. And I believe Congress can and will provide that leadership.

I.

Crime in my state is increasing at an alarming rate. It is increasing in every state. It touches our family, friends and neighbors. The State of Kansas, Uniform Crime Report for 1980 shows that the Crime Index, which consists of two categories of offenses, violent crimes and property crimes, increased in Kansas in 1980 by 11.9 percent over 1979. Within the category of violent crimes are murder/non-negligent manslaughter, rape, robbery and aggravated assault. Within this category, murder/non-negligent manslaughter increased in Kansas in 1980 by 24.0 percent over 1979; rape rose by 20.7 percent in 1980 over 1979; robbery increased by approximately 11.2 percent, while aggravated assault increased by 10.9 percent.

To fully appreciate the gravity of these most recent statistics, one need only note that such increases are the latest evidence of a bloody decade. In the period from 1971 to 1980, violent crimes increased in Kansas by approximately 91.3 percent, or from a reported 4,760 violent crimes in 1971 to 9,107 reported in 1980. Specifically, murder/non-negligent manslaughter increased approximately 65 percent; rape rose approximately 120 percent; robbery rose approximately 77 percent. Naturally, convictions involving these types of crimes most appropriately result in incarceration, and such increases have an obvious and profound impact on our correctional institutions.

Property crime is the second category of Crime Index offenses encompassing burglary, larceny/theft and motor vehicle theft. The 1980 Kansas Uniform Crime Report shows that property crimes increased by 11.9 percent in 1980 over 1979. Within this category, burglary increased by 16.6 percent; larceny/theft rose by 10.8 percent while motor vehicle thefts increased by 8 percent. As with violent crimes, the increase in property crimes during the past year merely indicates a continuation of the patterns of the past decade.

Kansans suffered over \$54 million in property lost to crime during 1980, endured a violent crime every hour of every day and a property crime every 4-1/2 minutes. If you think the rises in the inflation rate and interest rates are criminal you had better hide in the grocery stores and banks. Believe me, things are worse in the streets.

II.

My state, although reeling from the force of the criminal wave, has chosen to fight back. We are dedicated to the strict enforcement of our laws. We are spending increasing amounts on crime prevention, apprehension, prosecution and conviction of the meanest offenders. However, our successes and advances in collaring the criminals have a reverse impact on the existing penal facilities. Simply put, with more crimes, more offenders, more arrests and convictions, mandatory and extended sentences, and recidivism rates running at an awesome rate of 75 to 80 percent, our prison facilities have been smothered.

Kansas Department of Corrections records show that in 1974, the average daily population of inmates confined in Kansas state correctional facilities was 1,415 as compared to an average daily population thus far in 1981 of 2,432, an approximate 71 percent increase. Those incarcerated in the state's penal institutions today actually exceed the available bed capacity. As of October 20, 1981, the current population of inmates confined in Kansas state correctional facilities was 2,650. The current bed capacity is only 2,606.

And while there is generally some comfort in knowing others are in the same situation, there is none here. Regrettably, Kansas is not alone. According to recently released U.S. Department of Justice statistics, the national prison population grew by 20,000 (twice the rate of 1980) to 349,118 between January and June of this year. Prison overcrowding is close to being the national norm.

There are those who believe that the overcrowding of prison facilities is a mere inconvenience. I am here to correct that view. The overcrowding of prison facilities is a terribly dangerous and wasteful condition.

One tragic case in which overcrowding was a material factor is illustrative of my concern. These events, which have ominous implications for all states, occurred shortly before 2:00 a.m., Saturday, February 2, 1980. Inmates at the State Penitentiary of New Mexico near Santa Fe overpowered four correctional officers during a routine inspection in a medium security dormitory. The inmates rushed through the open dormitory door and within minutes had captured eight more officers, smashed their way to the main prison control center and thus gained access to every part of the main penitentiary building where 1,157 male inmates were residing under the care and custody of 25 correctional employees.

In the 36 hours that followed, 12 officers were held hostage, some had been beaten, stabbed and sodomized. Thirty-three inmates died at the hands of their fellow prisoners, some of the victims had been tortured and their bodies mutilated. At least 90 other inmates were seriously injured in the riot, suffering from drug overdoses, beatings, stabbings and rapes inflicted by other convicts.

By 1:30 p.m., Sunday, February 3, 1980, the violence had ceased. Police and National Guardsmen regained control of the penitentiary without resistance. The state then went about the business of identifying the dead, providing temporary housing for the inmates, rebuilding the burned out prison, preparing to prosecute criminal cases, defend civil suits and, if possible, ascertain just what had gone wrong. The total estimated riot related expenses as of May 1, 1980, amounted to \$2,568,178.14, as computed by the State of New Mexico's Attorney General's Office.

Overcrowding is but one of the problems of state prison facilities. With but few exceptions state prisons are antiquies. Forty-three percent of all convicts in this country are housed in facilities built before 1925, some dating back to the Civil War era. In this regard Kansas is a poignant example. Construction of the Kansas State Penitentiary at Lansing, Kansas, began in 1864 when Abraham Lincoln was President. For years, the facility has been expanded and has remained the state's primary penal facility. Even now, at a time when some \$1.7 million worth of renovations are in the works, one must feel somewhat cautious. These renovations cannot eliminate the fundamental problems of a century-old institution.

The need for new and improved correctional facilities at the state level has been a subject of debate for several years in Kansas. Funds for the preliminary and the final plans for the new medium security prison for Kansas were appropriated for the Kansas Department of Corrections from federal revenue sharing funds for the fiscal years of 1981 and 1982. The Kansas Legislature in 1981 appropriated \$200,000 for preliminary planning for the proposed facility to be built on property adjacent to the existing penitentiary. The State Finance Council recently approved the expenditure of \$158,000 to finance the final plans for the redesign of this proposed new medium security facility. Projected costs for construction of the prison facility, comprised of seven separate structures, is \$15.3 million. Architectural and criminal justice planners have collaborated to plan a sophisticated series of structures that would segregate prisoners into small groups to enhance security and manageability. The plan contemplates the reconditioning of existing structures that meet standards necessary for certification and the use of inmate labor.

The new dormitories would be ready for occupancy in January 1984 under the tentative construction schedule provided by the architects.

Temporary measures and expensive long-term solutions are inevitable. The question is how long can we wait for the changes and what will it cost us in lives and taxes to suffer the delay. Overcrowded, antiquated and constitutionally deficient facilities are an enormous drain of a state's resources, both human and monetary. Allow me to illustrate at least three costly problems associated with the national prison problem.

First, the United States Supreme Court and its inferior courts have and will mandate that state jails and prison facilities meet federal constitutional standards. Kansas is fortunate in this respect. The aforementioned renovation of Kansas correctional facilities is not being done under any federal court order stemming from constitutional violations in the confinement of state prisoners. However, the renovation at the penitentiary is the result of a 1980 settlement agreement arising from cases filed by eight inmates in 1977 and 1978. Similar prisoner litigation has increased steadily in the past decade and the conditions of confinement in our state facilities are continually attacked by prisoners and closely scrutinized in the federal and state court systems.

This, of course, is not a phenomenon that is peculiar to the State of Kansas. The American Civil Liberties Union has reported that as of February 1, 1981, 39 states had cases pending against their entire correction systems, while 25 states were under direct federal district court order regarding their correctional systems. Ultimately, federal judges will mandate the type of facilities which must be provided to meet constitutional guidelines. The cost of such litigation alone is no mere inconvenience to the taxpayers. Authorities from Colorado estimate court costs and attorneys fees will approach \$1 million in an ongoing class action suit challenging the inadequacy of the Canon City facility. The Texas Attorney General's office estimates court costs and attorneys fees above \$1 million in a suit filed by eight Texas inmates. The U.S. Department of Justice joined in the Texas case as a plaintiff, spending an estimated \$25,000 merely for exhibits and \$2 million in total prosecution costs.

Second, an equally serious cost arises in the inability of current penal facilities to adequately care for the burgeoning prison population. Outdated facilities and overcrowded conditions substantially interfere with the state's rehabilitative efforts. Throughout the country rehabilitation of convicted felons is viewed as a legitimate and necessary element of a corrections plan. Although punishment, protection of society and deterrence to criminal acts are also justifications frequently offered for state laws mandating incarceration, our rehabilitation efforts cannot be suspended for lack of beds, quarters or lighting. With a recidivism rate above 75 percent, the rewards of our efforts in this regard are all too infrequent. Inadequate facilities further frustrate the already fragile and complex rehabilitative process. As noted, the costs of crime are too high to ignore the benefits of dollars spent on convicts having potential for reform.

Closely related to the rehabilitation effort is the ability of the penal institution to segregate the violent offenders from the nonviolent inmate. Prisons which lack the physical capability of segregating portions of its prison population seriously limit the potential for rehabilitation of the first-time nonviolent offender. I am an advocate for the separation of persons according to the seriousness of their crimes against society. Making cellmates of murders and bad check writers does neither party any good. Our present prison facilities are sorely lacking in design and space for such segregation and I am advised that this condition is common among our sister states.

Thirdly, existing inadequate facilities are a danger to the law-abiding citizen. Protection of the public from the dangerous person has always been a fundamental element of our criminal

justice system. Inadequate security breaches this promise of protection.

On September 6, 1981, seven inmates of the Kansas State Penitentiary at Lansing fled from the state's maximum security institution after one of them, masquerading as a guard, opened a gate for the others and all scaled a fence to temporary freedom. Three were caught shortly after their escape in northeast Kansas and the remaining four were recaptured in southwestern Missouri within one week after their escape. During that week, the fugitives shot a city policeman, broke into a number of Kansas and Missouri homes and forced residents to assist in their flight. Fortunately, in terms of human life, the Kansas incident does not compare in scale to the tragedy of prior escapes in other states or the prison riot at the New Mexico State Penitentiary. However, the underlying factors of both these events can be attributed, in part, to outdated facilities, understaffed work shifts, obsolete equipment including communication systems, alarm systems and security fences.

It is one of the objectives of S.186 to plug this gap in security by improving the substandard prison facilities.

III.

These problems and costs are not limited to the one or two major correctional facilities operated by each of the states. Law enforcement relies upon local jails and holding facilities for temporary custody of accused and convicted persons.

Kansas is faced with serious problems in this regard. In the 1980 Annual Jail Inspection Report, the Kansas Department of Corrections reported that at the end of the calendar year 1980 there were 83 jails, 20 lock-ups, and 20 holding facilities operating within the 105 Kansas counties. Combined, these facilities confined approximately 1,350 individuals on any given day.

Of the 83 jails, 62, or approximately 75 percent, were reported deficient in one or more respects in meeting the Kansas Advisory Jail Standards and Procedures promulgated by the Kansas Department of Corrections; 9 of the 20 lock-ups had reported deficiencies, while 4 of the 20 holding cells had reported deficiencies. Major renovation or replacement of these facilities generally may be accomplished in Kansas only after a favorable vote of the people of each community. Time after time Kansas has witnessed the defeat of bond elections by voters unwilling to authorize a new or increased property tax. As this body is well aware, the property tax is a highly regressive tax which burdens those less able to bear the obligation. The federal tax and distribution mechanisms might be better equipped to more justly spread the costs of improving correctional facilities. Yet without federal assistance states may soon be forced by the courts to close their deficient local jails. Congress can prevent such crises by the enactment of S.186.

I am lead to believe by my colleagues in the National Association of Attorneys General that this circumstance is sadly common to most states. Again I call your attention to the Resolution of the Association supporting S.186 for its proposed measures to help remedy this near crisis dilemma of the local jail.

IV.

I am confident that the facts and reasons presented here dramatically demonstrate the cancerous crime in our nation and nearly overwhelming problems of confining an ever-increasing prison population in ancient structures. Yet, I must still address the more sensitive question regarding the need for greater federal guidance and aid. In other words, why, if inadequate prison facilities are a recognized state problem, cannot each state respond to the challenge without federal intervention? That is, indeed, the only debatable question before this committee. I am

persuaded by the following reasoning: First, states have born the entire burden for the costs of state correctional facilities for two centuries. Indeed, it is a matter of state concern and an exercise of state power. I emphatically oppose sweeping intervention by the federal government in state corrections policy. Yet the Congress has led the way to better schools, better roads, cleaner air and water and greater personal liberties for citizens of the several states with insightful legislation and necessary spending. If crime and its containment are now national problems, as indeed they are, the lack of historical precedent for federal involvement and contribution in this area must not dissuade Congress from a new course in a new time.

Secondly, with the advent of new federal spending restraints and taxpayer revolt at the state level, the tax dollar is even more precious. However, it is interesting to note that in a July NBC/Associated Press poll, Americans favored spending more money to build prisons 63 percent to 30 percent. Another important factor to consider is that President Reagan's Task Force on Violent Crime recommended a \$2 billion federal grant program to states for the specific purpose of building prisons.

Congressional leadership is necessary to make changes in the state prison facilities a reality. But as we have noted, the change will come. States will reluctantly channel meager resources to the renovation of penal facilities upon order of the federal courts. But, if the experiences of the last few years are instructive at all, we must know that the guidance of the courts is a slow and painfully expensive process. The human and financial waste is obvious and inexcusable if expended only to delay the inevitable.

Third, Congress has the ability to spend where it is most needed; to encourage those states most desperate for assistance; and to truly make penal reform a national priority. California cannot be expected to guide and assist Florida. Maine cannot borrow from Alaska. Only Congress can distribute tax revenues to the deserving and desperate state correctional programs.

Fourth, it is a fact of life that most Americans would like to forget crime and criminals. This has been the oft heard lament of the incarcerated felon. It is equally true that we would generally like to forget the problem of confining the accused and the convicted. Governors, legislators and taxpayers, quite candidly, might rather sweep the problem under the rug. There is always next year's legislative session. There are always other more popular and politic expenditures: roads, schools, sewers, welfare, industrial development and the list goes on. It is indeed a courageous politician who advocates construction of a new prison before the riot or escape. Congress can show the courage to make jails and prisons a priority. Congress can lead rather than react.

Finally, many states are in the throes of a tax revolt. Those states, like Kansas, which rely heavily upon property taxes and sales taxes are in trouble. Unlike more progressive taxes like the federal income tax, both the property and sales taxes are highly regressive; taxing heavily those least able to pay. Fundamental changes in state taxing policies will be slow in coming and taxes paid by citizens to the federal government might be more easily and quickly returned to the states for the benefit of prison priorities.

Conclusion

S.186 is a wise and timely piece of legislation. It incorporates novel tax-free bond financing tools, incentives for state contribution and useful portions of the overall public expense necessary to rebuild the antiquated state prison systems. It would be a sad mistake to view this attempt as yet another federal handout or unrestricted federal block grant. Please make no mistake, the taxpayer of Kansas, as elsewhere, will be forced to pay for the improvements to their jails and prisons. That expenditure can be timely and reasonable, or it can be too little, too late. It

can prevent violence and suffering or it can follow in the shadow of recidivism, litigation, escapes and riots. I pray for the former but I fear the latter.

For these reasons I urge Congress to exercise the leadership exemplified by S.186 and to guide the states to a more secure and humane correctional environment.

Senator MATHIAS. The next panel, Mr. William G. Nagel, the National Moratorium on Prison Construction; Mr. Irving Joyner, the legislative counsel for the National Prison Project of the American Civil Liberties Union. And I understand they will be accompanied by Mr. Bronstein.

STATEMENTS OF WILLIAM G. NAGEL, THE NATIONAL MORATORIUM ON PRISON CONSTRUCTION, AND IRVING JOYNER, LEGISLATIVE COUNSEL, NATIONAL PRISON PROJECT OF THE AMERICAN CIVIL LIBERTIES UNION

Mr. NAGEL. Mr. Chairman, I appreciate this opportunity to appear before you today.

A few years ago here in Washington I spoke at a seminar for State legislators convened by the Brookings Institution. I asked the participants to imagine, if they could, the following: That all prisoners in America's prisons and jails were able to incorporate themselves into a governmental entity in a city called Prisonia. Prisonia would be one of the largest cities in the United States, ranking behind St. Louis and just ahead of Denver. It would be larger than many cities having big league baseball and football franchises. It would be larger than 3 of our 50 States.

Were we able, as many of us would wish, to place Prisonia on some remote desert island outside the United States, it would rank larger in population than 21 of the U.N. members. It would have enough inhabitants to become a congressional district.

In that talk 2 years ago I noted that according to the American Institute of Architects, planning or construction was then under way for 726 more prisons and jails, costing some \$5.7 billion. These new institutions would accommodate 186,000 new residents for Prisonia. And I warned in New Orleans, Boston, Cleveland, and San Francisco that Prisonia would soon be larger than any of them.

Since saying that just 2 years ago my prophecy has just about come true. Prisonia is now approximately equal in size to New Orleans and Boston, and at its present growth will catch Cleveland in the next few months. By 1990 it will be larger than Detroit, the Nation's sixth largest city.

It seems inconsistent to me that the Congress at this time of retrenchment of Federal support to States for human services should be introducing legislation to assist States in the construction of more prison cells.

My work takes me into many States. I live in airplanes. I am in a different State every week. Last week I spoke at a conference convened by Governor Winter of Mississippi and attended by many of the State's legislators and judges. The purposes of the conference was to seek ways to control the growth of the prison population in that State, which has doubled in the last few years, and especially the cost, which since 1970 has risen from \$3 million to \$29 million. This is the question you were just asking. From \$3 million to \$29 million to \$37 million, and it is now projected for \$96 million, the

operating cost in Mississippi for fiscal 1990. That is a 29-fold increase in less than a decade.

Later in the same week on invitation I met with a small but influential group of opinionmakers in North Carolina, including a very good friend of yours from Maryland. That State, North Carolina, leads the Nation in its rate of imprisonment.

This influential group brought me down there to meet with them around dinner at night, because it was concerned by the fact that North Carolina led the Nation in the number of people it had locked up per 100,000, but they were also concerned about the cost, which had escalated from \$22 million to \$112 million in 5 years, a 500-percent increase.

Anyhow, all that leads me to think that your \$6½ billion might for the immediate present be welcomed by State officials, but it will not be welcomed by taxpayers as they come to know the full implications of that largesse. The \$6½ billion would be but a down-payment in terms of tax dollars. For every dollar spent on new prison construction the taxpayers of the several States will have to pay \$16 exclusive of inflation for operation over the next three decades, and that does not include bond costs which S. 186 would partially guarantee.

Six and one-half billion dollars in new construction subsidized by the Federal Government will cost the taxpayers of the several States \$104 billion exclusive of inflation for operation over the next three decades. That is how Government costs spiral, and that is the kind of spiraling I understand this administration is trying to reverse.

In my view, such an expenditure could be justified only by reasonable evidence that to follow a course of ever-increasing imprisonment would substantially add to the protection of the American people, but there is no such reasonable evidence.

In 1975 respected scholars such as James Q. Wilson, Ernest Van den Haag and others told us the road to public safety was through greater imprisonment. Since then we have followed their roadmap. Our prison population has risen from 225,000 to 350,000, a total of about 50 percent in 5 short years. Our jail population has increased correspondingly. But has all of this harshness brought us protection? The crime rate statistics suggest not.

Part I crimes, violent crimes, murder continue to escalate. I am not suggesting a cause-and-effect relationship. I am saying the assumptions presented by theoreticians, journalists, and legislators that more confinement, though costly, would reverse the crime spiral, bring added safety to the public and in time pay for itself has not been borne out. They have not been borne out in spite of the greatest increase in the use of imprisonment in our Nation's history.

For these and many other reasons too numerous to consider in the allotted 5 minutes, I urge that S. 186 not be enacted into law.

Thank you.

Senator MATHIAS. Thank you.

Mr. JOYNER. Thank you, Senator Mathias.

I am Irving Joyner with the national prison project. We appear here today, or I appear here today on behalf of the project to

register our opposition to bill S. 186, to support in part Senate bill 1597, and to register our opposition to Senate bill 1690.

I just want to make a couple of comments in the time I have allocated to me.

First, after listening to a number of the comments of various speakers, there seems to be some misunderstanding of what the problems are with prisons. As the U.S. Supreme Court has held, there are no cases that say that it is unconstitutional for a prison to be overcrowded. The courts have held that overcrowding when accompanied by any number of other problems—where the State has been remiss in any number of areas in terms of providing medical services, in terms of providing mental health services, in terms of providing adequate food services or properly classifying inmates, separating the violent from the nonviolent, and any number of other things—that those conditions taken together cause the institution to be unconstitutional and not by the mere fact that a prison has more than one person sleeping in a bed cell, as *Rhodes v. Chapman* held. That case is of limited application because it was limited merely to the facts in that case. And following that, it seems illogical then to suggest that the cure to the problem of the unconstitutionality of prisons on the State scene or the 36 institutions which have been referred to here as being under court order now will be resolved by building new prisons. A new prison can be as unconstitutional as an old, antiquated prison if the State does not provide the institution with the kind of resources necessary to service the inmate population, and that becomes the key concern here. I just wanted to point that out.

We certainly are in agreement with the ABT study or the recent report prepared by the National Institute of Correction that the current use of incarceration as a penal sanction shows no logical relationship to the crime rates. The obvious reason for this is that most crime in the United States, over 90 percent, is never even reported to authorities, and then we have a very low clearance rate or apprehension rate of those crimes that are reported.

According to the ABT study, construction costs can presently be assumed to cost between \$32,000 and \$40,000 per bed, with a projected future cost of \$70,000 per bed. The American Correctional Association estimates that the present cost of construction of each prison bed is now \$72,000. The typical prison with 60 square feet per cell would house 500 inmates and would cost roughly \$36 million each. If we use the ABT figures, we are talking about \$20 million.

After these prisons are built, the State would be left with the cost of maintaining them at what has been estimated by the American Correctional Association as \$8,000 per inmate per year or over \$4 million to maintain each of the institutions on a yearly basis.

Now, we spread those out by 200 or 300 new prisons, plus the cost of maintaining the prisons that are presently in operation. We are talking about an astronomical sum of money. We wonder how many jobs could be provided with this money, how many job training programs could be completed. We wonder how many student loans could be granted with these funds or how many babies could

be fed, how many homes could be built with the enormous outlay that would be required if S. 186 is enacted into law.

We think that the Dole bill is a cruel hoax on the American population, particularly with the caveat that the construction of prisons, jails, courthouses, or police stations will somehow prevent or decrease crime. At best this proposal is voodoo corrections.

There are better ways for us to use these funds, particularly at the time the White House and the Congress—

Senator MATHIAS. Would you go so far as to say it was a Trojan horse? [Laughter.]

Mr. JOYNER. I am sorry.

Senator MATHIAS. You called it voodoo corrections. I wonder if you would go the extra step and call it a Trojan horse. [Laughter.]

Mr. JOYNER. Well, Senator, we think there is a better way to spend this kind of money, particularly when the Congress is cutting back on the money or governmental programs designed to aid people, and now there is an affirmative action policy here to keep people locked up and to build more institutions to lock people up.

With respect to Senate bill 1597, we think this is a good bill and that this subcommittee should support that bill but with a couple of modifications. One, we think that the 9-member board of directors for the corporation of prison industries should be expanded to 12 members and that the 3 additional members should be either ex-offenders or representatives from offender organizations. We feel this would be necessary in terms of enhancing the credibility of the corporation, in terms of providing needed additional input into the running of the corporation, and also in terms of presenting the picture that this is a people's corporation rather than a corporation's corporation where the corporation will have a big say in the acquisition of cheap labor, which leads us to our next point.

We think the bill is remiss in that it does not specifically say that prisoners employed under this bill will be covered by the Federal minimum wage. In the absence of that wages will be left either to the corporation members to determine or to the businesses themselves to determine; and we all know that the cheaper the labor cost, the higher the profit. We think if you are going to replace workers from the free world with prisoners, then you ought to pay them what you would pay people in the free world, so we would support that.

We would also endorse, just to close out, the comments of Patrick McManus and the experience they have had in Kansas with a similar kind of program. We think that probably the most serious problem next to overcrowding in prison is idleness, because idleness is the thing that makes overcrowding dangerous. Overcrowding by itself is not that dangerous, but once you add idleness to it and any other number of deprivations, prisoners are then left to create their own nonsanctioned activities, and normally those have led to riots and prison takeovers, as in New Mexico, Michigan, and other places.

Senator MATHIAS. Thank you, Mr. Joyner.

I have for many years been an avid reader of the journals of James Boswell. I have just been reading the latest edition of his papers which are being published over a period of years by Yale University, and that suggests a question, Mr. Nagel, which has

only been answered by implication by Mr. Joyner. What is the alternative to these huge prison populations?

Now, in Boswell's day they had an alternative. He had a morbid interest in executions. In his journals he records every visit to Newgate Prison to see an execution, which were apparently mass public events in those days. And people were hanged for very minor, what we would consider today to be very minor offenses; or if not hanged, they were transported to some remote part of the world and left to sink or swim on some foreign shore.

What is the alternative? Mr. Joyner implies that better education, better housing, and better job opportunities are preventative measures, and I certainly agree. I have no quarrel whatever with that. But I do not think that society today will accept that future preventative course as an alternative to dealing with the immediate problems.

Mr. NAGEL. Of course, the thing Mr. Joyner points out dealing with the problems upstream is obvious, I think, but that is not what we are here to talk about. At the time Boswell was living they were executing people for all sorts of things. A Frenchman, Montesquieu, noted that as you looked at the countries of the world, the nations that had the least severe penalties maintained control over their populace just as well as those nations that had draconian sentences such as you were just describing, and urged for certainty of punishment but without the draconian implications that Boswell observed.

I think that is what has happened in the United States. We have enormous disparity in this country in incarceration rates in the various States. I did a study of it once. There is an enormous variation. For example, as you go from north to south—you take Minnesota and Texas. They have almost identical crime rates. Minnesota has 1,700 prisoners or 1,800 prisoners and Texas has 31,000 prisoners. One reason for that is over the years Minnesota has developed every kind of an alternative to long-term confinement that there is—community service programs, the sentencing commissions, putting caps on prison population. They have spent a lot of time and money to keep their sentences from being draconian, while Texas has gone the opposite direction.

Senator MATHIAS. Let me ask each of you—and we cannot prolong this because we are nearly out of time and we have one more panel—let me ask each of you, if you could, to give us your additional thoughts on that question, and if you have a copy of the study you have made on the comparison of the States, I think that would be helpful, and your suggestions as to the kinds of programs that would be alternatives to imprisonment—not the long-range programs which Mr. Joyner and I agree in, but what are we going to do with the problems in the courts right now.

And if you could let us have a brief memorandum, do it jointly or each of you split them, as you will, if you let us have them within 10 days, we can make that a part of the record.

Thank you both very much.

[The prepared statement and article submitted by Mr. Nagel follow:]

PREPARED STATEMENT OF WILLIAM G. NAGEL

Mr. Chairman and members of this committee. I appreciate this opportunity to appear before you to share my views relative to S186.

I entered prison work in 1946 after five years of military service and two years of graduate study at the University of Pennsylvania. For the next 11 years I worked as a principal official in a New Jersey prison.

Since then, I have served two Governors of Pennsylvania as Executive Secretary of Human Services. For the last twelve years, I have been head of a privately endowed organization that is interested in prison reform. I have been a member of several state and national commissions and task forces focusing on prison issues. I have been in hundreds of prisons and jails and have been an expert witness in over thirty prison and jail cases in both Federal and State courts.

Two years ago, here in Washington, I spoke at a seminar for state legislators convened by the Brookings Institution and sponsored by the National Institute of Corrections of the United States Department of Justice. I asked the participants to imagine, if they could, the following: That all prisoners in America's prisons and jails were able, somehow, to incorporate themselves into a governmental entity--say a city called Prisonia. Prisonia would be one of the very largest cities in the United States ranking immediately behind St. Louis and just ahead of Denver. It would be larger than many cities having big league baseball and football franchises--Pittsburgh, Atlanta, Cincinnati, Seattle, Kansas City, Minneapolis, Oakland, Miami, Buffalo, Denver, and Tampa. It would be larger than three of our fifty states.

Were we able, as many of us would wish, to take this community of prisoners out of the United States all together--

place it perhaps on a remote deserted island--Prisonia would rank larger in population than 21 of the U.N.'s present member nations. It would have enough inhabitants to become a congressional district.

In that talk two years ago, I noted that according to the June 1979 edition of Architecture for Justice, a publication of the American Institute of Architects, planning or construction was then underway for 726 new local, state, and federal jails and prisons. They would cost \$5.7 billion plus an inflation factor. They would accommodate 186,000 prisoners--186,000 new residents of Prisonia.

"Watch out," I warned New Orleans, Boston, Cleveland, and San Francisco. "Prisonia will be bigger than any of you."

Since saying the above just two years ago, my prophecy has just about come true. Prisonia is now approximately equal in size to New Orleans and Boston and, at its present growth rate, will catch Cleveland within the next twelve months. By 1990, it will be larger than Detroit--the nation's sixth largest city.

It seems inconsistent to me that the Congress, at this time of retrenchment of Federal support to states for human services, should be introducing legislation to assist states in the construction of more prison cells. My work takes me into many states. Last week I spoke at a conference convened by Governor Winter of Mississippi and attended by many of the state's legislators and judges. The purpose of the conference was to seek ways to control the growth of the prison population and especially the costs which accompany that growth. Since 1970, the cost of prison operation in Mississippi--exclusive of construction costs--has risen from \$3million to \$29 million. It is estimated at \$37,000,000 for fiscal year 1983. A legislative task force projects \$86 million for fiscal year 1990.

That would be a 29-fold increase in two decades, and all exclusive of construction costs.

Later in the same week, on invitation, I met with a small but very influential group of opinion makers in North Carolina. That state, as you may know, leads the nation (and maybe the world) in its rate of imprisonment. This influential group was concerned not only by that statistic, but also by the financial burdens it was placing on the taxpayers of that state. In 1971, North Carolina's prisons were budgeted at \$22 million. Its current budget request, for operations alone, is \$112 million. That is a 500% increase in a decade, exclusive of construction costs.

Your 6.5 billion dollars might, for the immediate present, be welcomed by state officials many of whom have testified in its favor. It will not be welcomed by the taxpayers as they come to know the full implications of your largesse. The \$6.5 billion would be but the tip of the iceberg--in terms of tax dollars. For every dollar spent on new prison construction, the taxpayers of the several states will have to pay \$16 (exclusive of inflation) for operations over three decades. And that does not include bond costs which \$186 would partially guarantee. That 16 to 1 ratio was determined as follows:

Construction Costs	4%
Architectural Fees	1%
Furnishings and Equipment	1 1/2%
Maintenance and Supply	3%
Food	5%
Utilities	6%
Civilian Salaries	24%
Guard Salaries	54%

Six and a half billion dollars in new construction subsidized by the Federal Government will cost the taxpayers of the several states \$104 billion (exclusive of inflation) over the next three decades. That's how government costs

spiral. That's the kind of spiraling that this administration is trying to reverse.

In my view, such an expenditure could be justified only by reasonable evidence that to follow a course of ever increasing imprisonment would substantially add to the protection of the American people. There is no such reasonable evidence.

In 1975, respected scholars such as James Q. Wilson, Ernest Van den Haag and others told us that the road to public safety was thru greater imprisonment. Since then, we have followed their road map. Our prison population has risen from 225,000 to 350,000 (over 50%) in those five short years. Our jail population has increased correspondingly.

Has all this harshness bought us protection? The crime statistics suggest not. Part 1 crimes, violent crimes, murder, continue to escalate. I am not suggesting a cause and effect relationship. I am saying that the assumptions presented by theoreticians, journalists, and legislators that more confinement, though costly, would reverse the crime spiral, bring added safety to the public, and in time pay for itself, haven't been borne out in spite of the greatest increase in the use of imprisonment in our nation's history, at an unprecedented escalation of dollar costs.

For these and other reasons too numerous to consider in the allotted five minutes, I urge that S186 not be enacted into law.

PRISONIA

AMERICA'S GROWING SPRAWLING MEGALOPOLIS

PRESENTED AT THE
SEMINAR FOR LEGISLATORS ON
ALTERNATIVES TO NEW PRISON CONSTRUCTION

BROOKINGS INSTITUTION
WASHINGTON, D.C.

September 18, 1979

By:

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PRISONIA -- AMERICA'S GROWING SPRAWLING MEGALOPOLIS

THOUGH I HAVE BEEN ASSOCIATED WITH THE AMERICAN PRISON SCENE SINCE 1946, I NEVER FULLY COMPREHENDED UNTIL LAST WEEK THE SIZE OF OUR PRISON ESTABLISHMENT. THEN, IN PREPARATION FOR THESE REMARKS, I SPENT SEVERAL HOURS IN THE PHILADELPHIA FREE LIBRARY.

I WILL SHARE SOME OF THE FINDINGS WITH YOU. THEY MIGHT SURPRISE YOU AS THEY DID ME.

IMAGINE, IF YOU WILL, THE FOLLOWING;¹ THAT ALL PRISONERS IN AMERICA'S PRISONS AND JAILS WERE ABLE, SOMEHOW, TO INCORPORATE THEMSELVES INTO A GOVERNMENTAL ENTITY -- SAY A CITY CALLED PRISONIA. PRISONIA WOULD BE ONE OF THE VERY LARGEST CITIES IN THE UNITED STATES RANKING IMMEDIATELY BEHIND ST. LOUIS AND JUST AHEAD OF DENVER. IT WOULD BE LARGER THAN MANY CITIES HAVING BIG LEAGUE BASEBALL AND FOOTBALL FRANCHISES -- PITTSBURGH, ATLANTA, CINCINNATI, SEATTLE, KANSAS CITY, MINNEAPOLIS, OAKLAND, MIAMI, BUFFALO, DENVER AND TAMPA.

WERE WE ABLE, AS MANY OF US WOULD WISH, TO TAKE THIS COMMUNITY OF PRISONERS OUT OF THE UNITED STATES ALTOGETHER -- PLACE IT PERHAPS ON A REMOTE DESERTED ISLAND -- PRISONIA WOULD RANK LARGER IN POPULATION THAN 21 OF THE U.N.'S PRESENT MEMBER NATIONS.

BEFORE LEAVING THIS EXERCISE I WILL BREAK THE STATISTICS DOWN TO A MORE MANAGEABLE SIZE -- STATE RATHER THAN NATIONAL POPULATION FIGURES.

¹ THE POPULATION FIGURES ON WHICH THE FOLLOWING DISCUSSION IS BASED HAVE BEEN EXTRACTED FROM THE FOLLOWING SOURCES:

U.S. DEPARTMENT OF JUSTICE, LEAA, CENSUS OF JAILS AND SURVEY OF JAIL INMATES 1978.

U.S. DEPARTMENT OF JUSTICE, LEAA, PRISONERS IN STATE AND FEDERAL INSTITUTIONS ON DECEMBER 31, 1978.

THE WORLD ALMANAC AND BOOK OF FACTS

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HOW THE CITIES GREW
U.S. PLACES OF 5,000 OR MORE POPULATION
1970 CENSUS OF COUNTIES AND STATES
NATIONS OF THE WORLD
ROSTER OF THE UNITED NATIONS AS OF
AUGUST 1978

TEXAS HAS 38,434 FEDERAL, STATE, AND LOCAL PRISONERS. 215 OF TEXAS' 254 COUNTIES (85%) DO NOT HAVE THAT MANY INHABITANTS. FLORIDA HAS 32,217 PRISONERS. 37 OF HER COUNTIES (55%) HAVE FEWER PEOPLE. GEORGIA'S 21,136 PRISONERS EXCEED THE POPULATION OF 114 (72%) OF HER 159 COUNTIES.

AMERICA, THE WORLD LEADER IN TELEPHONES, AUTOMOBILES, AIR CONDITIONERS, CENTRAL HEAT, AND BATH TUBS, HAS ALMOST BECOME THE WORLD LEADER IN PRISONERS PER ONE HUNDRED THOUSAND OF ITS PEOPLE. ONLY THE SOVIET UNION AND SOUTH AFRICA SURPASS US AND SEVERAL OF OUR STATES CAN CLAIM THE QUESTIONABLE DISTINCTION OF EXCEEDING EVEN THOSE TWO NATIONS IN THEIR USE OF CONFINEMENT.

PRISONIA IS POISED, RIGHT NOW, FOR THE GREATEST GROWTH IN ITS HISTORY.

THERE ARE MANY REASONS FOR THE EXPECTED GROWTH. FIRST, OF COURSE, IS CRIME. THE CRIME RATE, ACCORDING TO THE FBI'S UNIFORM CRIME REPORT, HAS ACCELERATED IN THIS DECADE FROM 2,750 TO 5,055 CRIMES PER 100,000 OF OUR POPULATION. THAT'S AN INCREASE OF 84%. HOW REAL THAT GROWTH MIGHT BE CAN BE ARGUED. MUCH OF THE REPORTED INCREASE UNDOUBTEDLY IS THE RESULT OF BETTER REPORTING CAUSED IN SOME PART BY THE GREATER AVAILABILITY OF TELEPHONES (ESPECIALLY IN THE GHETTOS AND RURAL AMERICA), BETTER RECORDS, BETTER POLICE RESPONSE, MORE AUTOMOBILES, AND INFLATION. A MORE PRECISE CAUSE LIES IN CERTAIN CRIME STATISTICS. FOR EXAMPLE -- MURDER. PRACTICALLY ALL MURDERS WERE REPORTED A DECADE AGO AND ALL ARE REPORTED TODAY. DURING THIS DECADE KNOWN MURDERS INCREASED FROM 15,000 TO 19,000 ANNUALLY IN THE UNITED STATES. THAT'S A 26% INCREASE COMPARED TO AN OVERALL 84% INCREASE IN REPORTED PART I CRIME. EVEN THAT 26% INCREASE IN MURDER IS MUTED IF YOU RESEARCH THE STATISTICS BACK TO THE 1930'S. OUR PRESENT MURDER RATE IS ALMOST IDENTICAL TO THE 1933 RATE

EUGENE DOLESCHAL HAS COMPARED THE FBI CRIME REPORTS WITH THE FINDINGS IN NATIONAL VICTIMIZATION SURVEYS CONDUCTED BY THE U.S. BUREAU OF CENSUS FROM 1973 - 1976. IN MARKED CONTRAST TO THE FBI FIGURES, THE VICTIMIZATION SURVEYS REVEAL THE OVERALL RATE OF SERIOUS CRIME WAS ESSENTIALLY THE SAME EACH YEAR, PARTICULARLY FOR THE MORE FRIGHTENING CRIMES SUCH AS HOMICIDE, PERSONAL ROBBERY, HOUSEHOLD BURGLARY AND ASSAULT. THE OVERALL RATE OF CRIMES OF

PERSONAL VIOLENCE IN ALL FOUR YEARS REMAINED AT 32 PER 1,000 PERSONS AGE TWELVE AND OVER. THERE WAS NO EVIDENCE OF SHARPLY INCREASING RATES OF CRIME IN ANY CATEGORY. RATES OF INJURY FROM SERIOUS VIOLENCE WERE VERY STABLE EACH YEAR AT 5.4, 5.6, 5.4, AND 5.5 PER 1,000.

REAL OR PERCEIVED, ONE RESULT OF THE HYSTERIA OVER CRIME, PLUS THE INCREASED EFFICIENCY OF THE POLICE AND PROSECUTORS (AIDED BY LARGE DOSES OF LEAA MONEY) HAS BEEN A STATE AND FEDERAL PRISON POPULATION GROWTH FROM 193,000 TO 303,000 DURING THIS DECADE, AND THE CURVE REMAINS POINTED UPWARD.

A GREAT CONTRIBUTOR TO THE RISING PRISON POPULATION HAS BEEN A SHIFT IN PUBLIC POLICY. PART OF THIS SHIFT EVOLVED OUT OF FRUSTRATION OVER THE REAL OR PERCEIVED RISING CRIME DISCUSSED ABOVE, BUT MUCH OF IT, I SUSPECT, GREW OUT OF THE PERSUASIVE ARGUMENTS OF THE INTELLECTUAL "NEW RIGHT" -- MEN LIKE WILSON, VAN DEN HAAG AND OTHER WHO ARE DEEPLY CONVINCED (1) THAT GOVERNMENT CAN NOT SOLVE HUMAN PROBLEMS AND (2) THAT CRIME WILL ONLY BE CONTROLLED BY "RAISING THE COST OF CRIME" THROUGH INCREASED INCARCERATION (AND/OR EXECUTIONS). IT HAS BEEN FURTHER ACCELERATED BY MORE LIBERAL INTELLECTUALS WHO, IN THEIR QUEST FOR EQUALITY UNDER THE LAW, WOULD OPT FOR LEGISLATION REQUIRING DEFINITE AND MANDATORY SENTENCES. THE WRITINGS OF THESE THOUGHT-LEADERS HAVE BECOME IDEAS IN GOOD CURRENCY THROUGHOUT THE LEGISLATURES OF AMERICA. IN THESE DAYS OF BLIND PASSION REGARDING CRIME AND CRIMINALS, THE RESULT HAS BEEN MORE AND LONGER CONFINEMENT. STATES WITH SOME OF THE BIGGEST RECENT INCREASES IN PRISON POPULATION HAVE BEEN THOSE IN WHICH THE NEW "JUSTICE" OR "MANDATORY" SENTENCING CONCEPTS HAVE BEEN INVOKED BY LEGISLATURES -- CALIFORNIA, INDIANA, MAINE, AND NEW YORK.

OTHER MASSIVE PRISON INCREASES HAVE OCCURRED IN JURISDICTIONS IN WHICH NEW AND EXPANDED INSTITUTIONS HAVE RECENTLY BEEN ACTIVATED -- TEXAS, NEVADA, HAWAII, AND MISSISSIPPI FOR EXAMPLE. HAWAII IS INTERESTING. IN 1970 HAWAII HAD THE SMALLEST PERCENTAGE OF ITS CITIZENS CONFINED OF ANY OF THE 50 STATES. EVEN THAT SMALL PRISON POPULATION HAD SHOWN A DECLINE IN EVERY ONE OF THE SIX PRECEDING YEARS -- 1965 THROUGH 1970. SINCE 1970 HAWAII HAS BEEN IN THE FORE-FRONT OF NEW PRISON CONSTRUCTION, AND ITS PRISON POPULATION HAS TRIPLED.

ITS RATE OF INCREASE HAS BEEN THE HIGHEST IN THE NATION -- UP 31% LAST YEAR ALONE.

THE CONTRIBUTION THAT A BUILDING POLICY MAKES TO HIGH PRISON POPULATION IS A POLICY DECISION THAT YOU WHO ARE LEGISLATORS CAN CONTROL.

THREE YEARS AGO, WE AT THE AMERICAN FOUNDATION DID AN INTERESTING BIT OF RESEARCH. WE LOOKED AT THE 15 STATES WHICH HAD DONE THE MOST PRISON BUILDING DURING THE PRECEDING 20 YEARS AND AT THE 15 STATES WHICH HAD DONE THE LEAST. HERE WERE THE FINDINGS:

1. FIFTEEN STATES INCREASED THE CAPACITY OF THEIR ADULT PRISON SYSTEMS BY 56 PERCENT, FROM 63,100 TO 98,649.

IN THESE STATES THE PRISON POPULATION INCREASED CORRESPONDINGLY (FROM 68,179 TO 107,118, OR 57 PERCENT).

THESE ARE THE STATES WHICH TODAY ARE FACING THE MOST SERIOUS PRISON OVERPOPULATION PROBLEMS.

2. FIFTEEN OTHER STATES INCREASED THEIR PRISON CAPACITY LESS THAN 4 PERCENT, FROM 49,575 TO 51,440.

IN THESE STATES THE PRISON POPULATION DECREASED 9 PERCENT, FROM 52,804 TO 47,960.

THIS YEAR, APT ASSOCIATES OF BOSTON DID A MUCH MORE SOPHISTICATED STUDY FOR CONGRESS ON THE SAME ISSUE. ITS FINDING WAS THAT THE MOST IMPORTANT SINGLE CONTRIBUTOR TO PRISON POPULATION WAS NOT CRIME, OR UNEMPLOYMENT, OR FAMILY BREAKDOWN, OR RACE, OR INFLATION. IT WAS SIMPLY THE AVAILABILITY OF CELLS. JUDGES, PROSECUTORS, POLICE, PAROLE BOARDS ALL ADJUST THEIR PRACTICES TO THE AVAILABILITY OF PRISON SPACE. IT SEEMS THAT WE AMERICANS COULD FIND TENS -- EVEN HUNDREDS -- OF THOUSANDS OF OTHER AMERICANS TO LOCK UP IF WE ONLY HAD THE CELLS.

I HAVE MENTIONED TWO CONTRIBUTORS TO OUR HUGE PRISON AND JAIL POPULATIONS. ONE MORE SHOULD BE MENTIONED -- THE LENGTH OF OUR SENTENCES. BY WESTERN WORLD STANDARDS THEY ARE HORRENDOUS. SWITZERLAND IS OFTEN VIEWED BY AMERICANS AS A HIGHLY HOMOGENEOUS IDYLIC COUNTRY WITHOUT MAJOR CULTURAL

PROBLEMS. THAT IS NOT THE REALITY. SWITZERLAND IS MADE UP OF ETHNICS SPEAKING THREE MAJOR LANGUAGES AND MANY DIALECTS. TWENTY PERCENT (6-1/2 MILLION) OF ALL PERSONS LIVING IN SWITZERLAND ARE FOREIGN WORKERS GRANTED PERMANENT RESIDENCY TO PROVIDE THE LABOR FORCE FOR THE COUNTRY'S BOOMING INDUSTRIES.

THE SWISS HAVE CRIME. THE MURDER RATE IN ITS LARGEST CITY (ZURICH, 1.7 PER ONE HUNDRED THOUSAND) IS APPROXIMATELY THAT OF SEVERAL AMERICAN CITIES, AND COMPARABLE TO AT LEAST SIX AMERICAN STATES WITH RATES OF 2.0 OR LOWER. RECENT VICTIMIZATION STUDIES REVEAL THAT IT EXPERIENCES EVEN MORE ASSAULTS THAN FOR EXAMPLE DENVER OR PORTLAND. YET SWITZERLAND HAS PRACTICALLY NO ONE IN JAIL (IT ISSUES CITATIONS) AND VERY FEW IN PRISONS. MARSHALL CLINARD, A HIGHLY RESPECTED CRIMINOLOGIST, HAS RECENTLY STUDIED SWITZERLAND'S CRIMINAL PRACTICES AND REPORTS THAT, IN THAT COUNTRY, SENTENCES ARE GENERALLY SHORT EVEN FOR SERIOUS CRIME, AND MOST PEOPLE SENTENCED TO PRISON HAVE THEIR SENTENCES SUSPENDED.

THE NETHERLANDS IS ANOTHER EXAMPLE OF A HIGHLY INDUSTRIALIZED, DIVERSE PEOPLE WHO ALMOST REFUSE TO USE PRISONS. I SAY "DIVERSE" BECAUSE HUNDREDS OF THOUSANDS OF INDONESIONS, MOLUCCANS, AND SURINAMERS MIGRATED TO HOLLAND WHEN THEIR HOMELANDS BECAME INDEPENDENT OF DUTCH RULE. MANY OF THEM HAVE BECOME PART OF AN UNDERCLASS, FREQUENTLY UNEMPLOYED AND ALIENATED. SOME HAVE BECOME MILITANT. ALL OF YOU REMEMBER THE SERIOUS HIJACKINGS OF TRAINS AND SCHOOLS CARRIED OUT BY SOUTH MOLUCCAN TERRORISTS BETWEEN 1975 AND 1977.

IN SPITE OF THE HIGH DENSITY AND INDUSTRIALIZATION, IN SPITE OF THE DIVERSITY OF POPULATION, AND EVEN IN SPITE OF THE TERRORISM, THE DUTCH HAVE KEPT THEIR PRISON POPULATION REMARKABLY LOW -- ONLY 25 PER 100,000 OF THEIR PEOPLE. THE AVERAGE SENTENCE IN THE NETHERLANDS IS ONLY 27 DAYS. NO SOUTH MOLUCCAN TERRORIST -- DESPITE THE HOLDING FOR HOSTAGE OF SCORES OF DUTCH CHILDREN, DESPITE THE NEED TO USE THE ARMY TO RECAPTURE THE HIJACKED TRAINS, AND DESPITE THE RESULTING DEATHS -- NONE RECEIVED A SENTENCE IN EXCESS OF EIGHT YEARS. DURING THE ENTIRE DECADE 1963 - 1973 THE DUTCH SENTENCED NO ONE TO DEATH AND ONLY 2 PERSONS TO LIFE. THIS IN A NATION OF 13 MILLION PEOPLE. BY WAY OF CONTRAST, FLORIDA, WITH ONLY HALF OF THE NETHERLANDS

POPULATION, CURRENTLY HAS 135 PERSONS ON DEATH ROW AND 2,000 PERSONS SERVING LIFE SENTENCES.

A COMMENTARY ON THAT CONTRAST. IMMEDIATELY AFTER WRITING THE ABOVE, I LEFT FOR LUNCH AND WAS JOINED AT THE ELEVATOR OF OUR BUILDING BY TWO SUCCESSFUL STOCKBROKERS WHO OCCUPY THE SUITE NEXT TO OURS. I SAID "MAY I ASK YOU TWO INTELLIGENT AND UNINVOLVED PEOPLE A QUESTION?"

THEY AGREED (ONE ADDING THAT HE CHARGES \$150 PER HOUR WITH A 10% DISCOUNT TO CHARITABLE ORGANIZATIONS.) I ASKED "EXPLAIN THE FOLLOWING CONTRAST TO ME. DURING THE PAST DECADE HOLLAND EXECUTED NO ONE AND SENTENCED ONLY TWO PEOPLE TO LIFE. FLORIDA WITH HALF THE POPULATION (13 MILLION TO 6-1/2 MILLION) HAS 135 ON DEATH ROW AND 2,000 SERVING LIFE."

AFTER A BIT OF SPARRING DURING WHICH THEY ATTEMPTED TO EXPLAIN THE DIFFERENCE BY VARIATIONS IN CRIME RATES AND RACIAL AND ETHNIC DISPARITIES, THE YOUNGER STOCKBROKER BLURTED OUT, "I DON'T CARE WHAT IT TELLS ME. THIS I KNOW. WE'RE TOO SOFT ON CRIMINALS. IF I HAD MY WAY THERE WOULD BE TWICE AS MANY LOCKED UP."

HE MAY HAVE HIS WAY. ACCORDING TO THE JUNE 1979 EDITION OF ARCHITECTURE FOR JUSTICE, A PUBLICATION OF THE AMERICAN INSTITUTE OF ARCHITECTS, PLANNING OR CONSTRUCTION IS NOW UNDERWAY FOR 726 NEW LOCAL, STATE, AND FEDERAL JAILS AND PRISONS. THEY WOULD COST \$5.7 BILLION PLUS AN INFLATION FACTOR. THEY WOULD ACCOMMODATE 186,000 PRISONERS -- 186,000 NEW RESIDENTS FOR PRISONIA.

WATCH OUT NEW ORLEANS, BOSTON, CLEVELAND AND SAN FRANCISCO. PRISONIA WILL BE BIGGER THAN ANY OF YOU. WATCH OUT SOVIET UNION. JUST AS WE SURPASSED YOUR SPUTNIKS, SO WILL WE PASS YOUR GULAG ARCHIPELAGO.

THAT PART OF ME THAT IS CYNICAL AND DEFEATIST WOULD HAVE ME STOP RIGHT NOW -- PERHAPS WITH A CLOSING STATEMENT TO THE EFFECT THAT EXTREME SOCIALISM (SOVIET UNION) AND EXTREME INDIVIDUALISM (UNITED STATES) LEAD TO THE SAME RESULT -- EXTREME PUNITIVENESS MARKED BY EXCESSIVE IMPRISONMENT. FREEDOM AND/OR LACK OF FREEDOM = IMPRISONMENT. AMEN.

I CAN NOT LEAVE IT THERE, BECAUSE I AM CONVINCED THAT FREEDOM FOR SOME DOES NOT HAVE TO BE SUSTAINED AT THE COST OF THE IMPRISONMENT OF HUNDREDS OF THOUSANDS OF OTHER POORER, LESS EDUCATED AND/OR DARKER AMERICANS. THERE ARE OTHER WAYS.

THAT IS WHAT THIS SEMINAR, I SUSPECT, IS ALL ABOUT.

THE SIZE OF THE FUTURE PRISON POPULATION OF THE VARIOUS STATES WILL DEPEND PRIMARILY ON TWO PUBLIC POLICY DECISIONS WHICH YOU LEGISLATORS WILL MAKE. THEY ARE THESE:

1. LENGTH OF CONFINEMENT.

THE PRESENT PRISON POPULATION CRUNCH IN MANY STATES HAS BEEN INFLUENCED MUCH MORE BY POLICIES LEADING TO INCREASED TIME SERVED RATHER THAN BY INCREASED ADMISSIONS. FOR EXAMPLE, A PUBLIC REFERENDUM IN MICHIGAN ELIMINATED "GOOD TIME", THUS CONTRIBUTING TO THAT STATE'S PRISON POPULATION EXPLOSION FROM 8,702 ON JANUARY 1, 1975, TO OVER 15,000 CURRENTLY. IN NEW YORK, THE MANDATORY SENTENCES FOR DRUGS HAVE BEEN INFLUENTIAL IN INCREASING THE PRISON CENSUS IN THAT STATE FROM 14,387 TO 20,400, SINCE 1975. FLORIDA'S TOUGH "FELONY WITH A GUN" LAW HAS HELPED TO CREATE A SENTENCING MIND-SET WHICH HAS MUSHROOMED THAT STATE'S PRISON CENSUS FROM 11,400 TO ITS PRESENT 21,000. EVEN MINNESOTA WITH A RELATIVELY MODEST PRISON POPULATION HAS SEEN AN INCREASE FROM 1370 TO 1877 LARGELY BECAUSE OF DECISIONS BY THE PAROLE BOARD TO LENGTHEN THE PERIOD OF CONFINEMENT FOR MANY OFFENDERS. RECENTLY IMPLEMENTED "PRESUMPTIVE SENTENCING" IN INDIANA ALREADY FILLS PRISON OFFICIALS IN THAT STATE WITH TREPIDATION BECAUSE OF THE INCREASE IN POPULATION WHICH WILL RESULT.

2. THE AVAILABILITY AND USE OF ALTERNATIVES

JUDGES, GIVEN NO OPTIONS, SEND PEOPLE TO PRISON. JUDGES WITH VIABLE OPTIONS MORE OFTEN DO NOT. TEXAS AND PENNSYLVANIA ARE TWO CASES IN POINT. BOTH HAVE ABOUT 12 MILLION PEOPLE, AND THEY HAVE ALMOST THE SAME NUMBER OF BLACKS. THE CRIME RATE OF THE TWO STATES FALLS WITHIN THE NATION'S MIDDLE ONE-THIRD. BOTH HAVE ABOUT 87% OF THEIR PEOPLE LIVING IN URBAN AREAS. YET PENNSYLVANIA HAD LESS THAN 8,000 STATE PRISONERS ON JAN-

UARY 1, 1979, WHILE TEXAS HAD 25,419 ON THAT DATE.

AMONG THE REASONS FOR THIS REMARKABLE CONTRAST ONE IS, IN MY OPINION, MOST PROMINENT. IT IS HISTORICAL. PENNSYLVANIA IS INFLUENCED MORE THAN MOST PEOPLE KNOW BY A SMALL BUT REMARKABLE GROUP OF PEOPLE -- THE QUAKERS -- WHO WOULD RATHER RESTORE THAN PUNISH. ONE OF THEM, THE LATE SUPREME COURT JUSTICE CURTIS BOK, PUT THAT CONCEPT CENTRAL TO THE PURPOSE OF GOVERNMENT: "WHEN A NATION HAS LOST ITS WILL TO RESTORE, IT HAS LOST ITS SOUL" HE ONCE WROTE. TEXAS, ON THE OTHER HAND, IS OF THE FRONTIER WITH ITS TRADITIONS OF RANGE JUSTICE. ITS PHILOSOPHY IS CLOSER TO KANT WHO HELD THAT GUILT MUST BE MATCHED WITH PUNISHMENT. HE SAID THAT IF PUNISHMENT "WERE TO PERISH, IT WOULD NO LONGER BE WORTHWHILE FOR MEN TO REMAIN ALIVE ON THIS EARTH."

PENNSYLVANIA, INFLUENCED BY THE QUAKERS, HAS FOR YEARS STRIVEN TOWARD THE DEVELOPMENT OF ALTERNATIVES. AS FAR BACK AS THE 1950'S, THIS STATE OFFERED SUBSIDIES TO COUNTIES TO DEVELOP JUVENILE AND ADULT PROBATION SERVICES. IN THE EARLY '60'S IT OFFERED COUNTIES EXTENSIVE TRAINING FOR COUNTY PROBATION AND PAROLE STAFF. SINCE THE ADVENT OF LEAA MONIES IN 1969, IT HAS CONCENTRATED ON AVOIDING UNNECESSARY DETENTION IN JAILS OR PRISONS AND IT HAS SPENT NONE, AND I MEAN NONE, OF ITS HUNDREDS OF MILLIONS OF BLOCK GRANT MONEY ON PRISON CONSTRUCTION. DURING THE SAME PERIOD TEXAS HAS LED THE NATION IN THE EXPANSION OF ITS PRISON SYSTEM. IN SPITE OF THAT ENORMOUS INCREASE IN ITS USE OF PRISONS -- PERHAPS EVEN BECAUSE OF IT -- THE CRIME RATE IN TEXAS HAS RISEN 25% MORE SHARPLY THAN IN PENNSYLVANIA, AND TEXAS REMAINS AN INFINITELY MORE DANGEROUS PLACE IN WHICH TO LIVE. THE COMPARATIVE CURRENT MURDER RATES, FOR EXAMPLE, ARE 5.6 PER 100,000 FOR PENNSYLVANIA AND 13.3 FOR TEXAS. A CITIZEN IS 15% MORE APT TO BE MUGGED IN THE LONE STAR STATE THAN IN THE QUAKER STATE, AND A WOMAN TWICE AS LIKELY TO BE RAPED. ONE HAS TO QUESTION THE PROTECTION THAT TEXAS' ADHERENCE TO KANT'S PHILOSOPHY HAS BROUGHT ITS PEOPLE.

YOU WHO ARE HERE ARE LEGISLATORS ELECTED BY POPULAR BALLOT. YOU ARE BOTH THE PRODUCT OF, AND THE ESSENCE OF, DEMOCRACY. YOU KNOW BETTER THAN I WILL EVER KNOW HOW COUNTER TO PUBLIC OPINION THESE THOUGHTS OF MINE RUN.

NEARLY A HUNDRED AND FORTY YEARS AGO A FRENCHMAN VISITED THIS COUNTRY. HIS NAME WAS TOCQUEVILLE. HIS PURPOSE WAS TO STUDY THAT MUCH HERALDED, AND MUCH DEBATED, NEW AMERICAN INVENTION -- THE PRISON. THIS PRECOCIOUS YOUNG MAN STUDIED MUCH MORE THAN THE PRISON. HE STUDIED THE AMERICAN PEOPLE AND BECAME A DEVOTED ADVOCATE OF DEMOCRACY. I HAVE JUST READ SOME OF HIS RECENTLY TRANSLATED, ELOQUENT SPEECHES GIVEN BEFORE THE FRENCH CHAMBER OF DEPUTIES WHEN HE WAS A MEMBER OF THAT BODY A CENTURY AND A THIRD AGO. IN ONE OF THOSE SPEECHES -- ARGUING AGAINST SOCIALISM -- HE PRESENTED AMERICA AS A CITADEL AGAINST SOCIALISM BECAUSE IT WAS "THE ONLY EXISTING DEMOCRACY, THE ONLY TRULY DEMOCRATIC REPUBLIC KNOWN TO HISTORY."

YET IN SPITE OF HIS KNOWLEDGE OF, BELIEF IN, AND ADVOCACY OF DEMOCRACY -- AMERICAN STYLE -- HE WARNED OFTEN THAT THE GREATEST DANGER TO THE AMERICAN DEMOCRATIC EXPERIMENT WOULD BE THE "TYRANNY OF THE MASSES". HE FEARED THAT IF A MAJORITY EVER HATED A MINORITY GREATLY ENOUGH, FREEDOM WOULD BE LOST -- NOT ONLY TO THAT MINORITY, BUT TO THE NATION ITSELF. LEGISLATORS HAD TO STAND FIRM AS OAKS AGAINST THE WINDS OF TYRANNY RISING OUT OF THE MAJORITY'S FEAR OR HATRED OF A MINORITY.

THOSE OF YOU WHO REPRESENT A LEGISLATIVE DISTRICT IN OHIO OR GEORGIA NEED NO POLITICAL ADVICE FROM SOMEONE WHO REPRESENTS NO ONE BUT HIMSELF IN THE 8TH DISTRICT OF PENNSYLVANIA. I, NEVERTHELESS, URGE YOU TO STAND FIRM AS OAKS AGAINST THE FEAR AND HATRED OF THOSE WHO WOULD BUILD EVEN MORE PRISONS. THERE ARE OTHER WAYS.

THIRTY-TWO YEARS AGO I BEGAN A CAREER OF WORKING IN PRISONS. IF I HAVE LEARNED ANYTHING FROM THAT LONG EXPERIENCE, THE FIRST 13 YEARS OF WHICH WERE WITHIN THE PRISONS OF PENNSYLVANIA AND NEW JERSEY, IT IS THESE TWO THINGS:

1. THE FUTILITY OF BLIND VENGEANCE AS EXPRESSED IN INDISCRIMINATE IMPRISONMENT, AND
2. THE HOPEFULNESS OF NON-RETRIBUTIVE RESPONSES TO MOST ACTS CALLED CRIMINAL AS EXPRESSED IN THE SYSTEMATIC DEVELOPMENT OF VIABLE ALTERNATIVES TO IMPRISONMENT.

PREPARED STATEMENT OF ALVIN J. BRONSTEIN AND IRVING L. JOYNER

We are pleased to appear before the Senate Judiciary Subcommittee on Criminal Law to discuss S. 186, S. 1597 and S. 1690. We are appearing in our capacity as Executive Director and Legislative Counsel of the National Prison Project of the American Civil Liberties Union Foundation. We welcome this opportunity to raise what we feel are critical points regarding the bills presently being considered by this subcommittee.

The National Prison Project is the largest legal advocacy organization for prisoners in this country and the only organization that monitors the operations of the Federal Bureau of Prisons. As an organization we seek to strengthen and protect the civil and constitutional rights of adult and juvenile prisoners, to improve conditions in the nation's prisons and jails, and to develop rational, less costly and more humane alternatives to traditional incarceration. We have also engaged in efforts to devise model prison procedures and regulations.

In furtherance of the activities described above, the Project's staff attorneys and other staff members are engaged in the representation of prisoners incarcerated in penal institutions throughout the country. The Project has been and is presently involved in many important cases concerning the rights of prisoners. In addition, the Project's staff has been consulted by correctional officials and legislative committees in various States, the federal government and Congress.

The National Prison Project does not agree with the naive notion that the construction of additional prisons will resolve the prison overcrowding problem or have a noticeable effect upon the escalating crime rate. S. 186 would, if passed, appropriate \$6.5 billion to be used as

financial assistance to the States for the construction of criminal justice facilities and to make interest payments on construction bonds if passed by the States.

It is a fact that prisons and jails in many States are obsolete, overcrowded and that most of the States' correctional facilities are under court order to improve the physical conditions.¹ A comprehensive report recently released by the National Institute of Justice, the Abt Study, American Prisons and Jails,² indicates that the

¹ Among the States in which prisons or prison systems have been placed under court order because of conditions of confinement challenged under the Eighth and Fourteenth Amendments are: Alabama, see Pugh v. Locke, 406 F.Supp. 318 (MD Ala. 1976), aff'd as modified, 559 F.2d 283 (CA 5 1977), rev'd in part on other grounds, 438 U.S. 781 (1978) (per curiam); Arizona, see Harris v. Carswell, No. CIV-75-185-PHX-CAM (Ariz. 1980) (consent decree); Arkansas, see Finney v. Mabry, 458 F.Supp. 720 (ED Ark. 1978) (consent decree); Colorado, see Ramos v. Lamm, 639 F.2d 559 (CA10 1980), cert. denied, U.S. (1981); Delaware, see Anderson v. Redman, 429 F.Supp. 1105 (Del. 1977); Florida, see Costello v. Wainwright, 397 F.Supp. 20 (MD Fla. 1975), aff'd 525 F.2d 1239 (CA5), vacated on rehearing on other grounds, 539 F.2d 547 (CA5 1976) (en banc), rev'd 430 U.S. 325, aff'd on remand, 433 F.2d 506 (CA5 1977) (en banc) (per curiam); Georgia, see Guthrie v. Evans, No. 3068 (SD Ga. 1978) (consent decree); Illinois, see Lightfoot v. Walker, 486 F.Supp. 504 (SD Ill. 1980); Iowa, see Watson v. Ray, No. 78-106-1 (SD Iowa 1981); Kentucky, see Kendrick v. Bland, No. 76-0079-P (WD Ky. 1980) (consent decree); Louisiana, see Williams v. Edwards, 547 F.2d 1206 (CA5 1977); Maryland, see Johnson v. Levine, 450 F.Supp. 648 (Md. 1978) aff'd in part, 588 F.2d 1378 (CA4 1978), and Nelson v. Collins, 455 F.Supp. 727 (Md. 1978), aff'd in part, 588 F.2d 1378 (CA4 1979); Mississippi, see Gates v. Collier, 501 F.2d 1281 (CA5 1974); Missouri, see Burks v. Teasdale, 603 F.2d 59 (CA8 1979); New Hampshire, see Laaman v. Helgemoe, 437 F.Supp. 269 (NH 1977); New Mexico, see Duran v. Apodaca, No. 77-721-C (NM 1980) (consent decree); New York, see Todaro v. Ward, 565 F.2d 48 (CA2 1977); Ohio, see (in addition to this case) Stewart v. Rhodes, 473 F.Supp. 1185 (ED Ohio 1979); Oklahoma, see Battle v. Anderson, 564 F.2d 388 (CA10 1977); Oregon, see Capps v. Atiyeh, 495 F.Supp. 802 (Ore. 1980); Pennsylvania, see Hendrick v. Jackson, 309 A. 2d 187 (1973); Rhode Island, see Palmigiano v. Garrahy, 443 F.Supp. 956 (RI 1977), remanded, 599 F.2d 17 (CA1 1979); Tennessee, see Trigg v. Blanton, No. A-6047 (Chancery Ct., Nashville, 1978) vacated (Ct. App. 1980) (for consideration of changes in conditions), app. pending (Tenn. S. Ct.); Texas, see Ruiz v. Estelle, 503 F.Supp. 1265 (SD Tex. 1980). See also Feliciano v. Barcelo, 497 F.Supp. 14 (PR 1980); Barnes v. Government of the Virgin Islands, 415 F.Supp. 1218 (VI 1976).

² American Prisons and Jails, National Institute of Justice, October, 1980

prison population will expand over the next several years at a rate of between 4.5% to 14.5% per year.³ It is estimated that as of April, 1981, 553,523 persons were in prisons in the United States, or that 244.3 persons were incarcerated for every 100,000 persons in the population.⁴

The projected answer to the problem presented above is to build additional prisons. The cost of this building program is astronomical and will have a negligible effect, if any, on the crime rate.⁵ Just recently the National Institute of Corrections, an arm of the Department of Justice, said: "The current use of incarceration as a penal sanction shows no logical relationship to crime rates".⁶ The obvious reason is that most crime in the United States (over 90%) is never reported to the authorities and we have a very low clearance or apprehension rate (between 19-20%) of all reported crime. According to the Abt Study, construction costs can presently be assumed at \$32,000 - \$40,000 per bedspace, with a projected future cost of \$70,000. This means that expenditures on the order of eight to ten billion dollars could be anticipated merely to resolve the deficit between reported capacity and a measure on 60 square feet per inmate".⁷

The Abt Study concludes that "while there are substantial needs to renovate or replace existing facilities, our historical analysis of the relationship between population and capacity suggests that the construction of supplemental prison or

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Ibid. at p. 96

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Figures compiled by the National Moratorium on Prison Construction

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William G. Nagel, "On Behalf of a Moratorium on Prison Construction", Crime and Delinquency, April, 1977

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Request for Proposals, National Institute of Corrections, Fiscal Year 1982, July, 1981, p. 14

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American Jails and Prisons, Vol. 1, p.115

jail capacity may, at best, provide short-lived reductions in crowding and, at worst, may result in absolute increases in the number of prisoners held in substandard conditions".

The American Correctional Association estimates that the present cost to construct each prison bed is \$72,000. The typical prison with 60 square feet per cell would house 500 inmates and would cost \$36 million each (\$20 million if the Abt figures are correct). After these prisons are built it would cost approximately \$8,000 per inmate per year, or \$4 million to maintain each of these institutions.

S. 186 would authorize the spending of \$6.5 billion by the Federal government through 1988 and require an additional \$2.2 billion by the State as matching funds, merely to construct the facilities. In addition, the States would be strapped with the additional cost of approximately \$4 million per year for each facility that it chose to build.

We wonder how many jobs could be provided; how much job training could be completed; how many student loans granted; how many babies could be fed and how many homes could be built with the enormous financial outlay that will be required if S. 186 is enacted into law.

Such an expenditure might be acceptable if there was an indication that it would produce some results. The Abt Study points out that there is no evidence that the use of prisons or incarceration has any effect on the crime rate at all. The Dole Bill thus presents the "gruel hoax" to the American Citizen that the construction of prisons, jails, courthouses and police stations will somehow prevent and decrease crime. At best, this proposal is voodoo corrections.

The \$6.5 and \$2.2 billion could be better spent providing alternatives to incarceration and releasing

from prisons the thousands of persons that need not be incarcerated in the first instance if overcrowding is our concern. The money could be better spent by providing funds to community groups and organizations to set up crime prevention programs and projects, if the rising crime rate is our concern. Yes, there are better ways to use this amount of money, particularly at the same time that the White House and the Congress are mounting a relentless attack upon all governmental programs designed to aid people.

We oppose S. 186 and urge its rejection by this Subcommittee.

S. 1597

S. 1597, a bill to establish a corporation for Prison Industries introduced by Senator Robert Dole, is a good piece of legislation that should be supported by this subcommittee. We do, however, offer several proposals that would, if enacted, strengthen the bill considerably. The bill, if passed, would provide for a possible unique and challenging cooperation between the Federal Bureau of Prisons and private industry.

With respect to the nine-member Board of Directors of the Corporation for Prison Industries, we would strongly urge that an additional three (3) members be added, increasing the Board to twelve (12) members. The three additional members should be ex-offenders or representatives from offender-oriented community organizations. Although the proposed composition offers a good mix of representatives from private industry, State Corrections Departments, the public at large and organized labor, there is no effort to include the affected population - prisoners - in the management of the corporation. This glaring omission can be solved simply by adding ex-offenders as additional Board members.

The inclusion of persons with prison-client background is extremely important as it allows for input from the class of persons that is to be aided by this legislation. In addition, such representation will go a long way toward emphasizing that the Corporation for Prison Industries is designed to aid the inmate population rather than being a source of cheap labor for private industry.

Another key and perhaps significant omission of this bill is its failure to spell out whether prisoner-employees will be covered by the Federal minimum wage law. The absence of any directive in the bill as to wages will subject the Corporation to the charge of promoting "slave labor". As an example, in Fiscal Year 1980, 6,361 inmates were involved in the Federal prison industries program at an annual cost of \$8.02 billion. Inmates received from \$.34 - .85 per hour for their work in 1980. The pay range for 1981 was \$.38 - .95 per hour. The typical jobs held by these inmates were in the manufacturing area, e.g., shoes, brushes, furniture, machine tools and dye, textile and other metal products. Inmates also worked in printing and data processing. Jobs in State institutions are less varied and the pay does not approach the "high" wages paid to Federal prisoners. Also of note is the fact that only slightly over 6,000 Federal prisoners out of a 1980 population of approximately 23,000 were employed in prison industries.

It would be tragic if the Corporation for Prison Industries was to pay inmates the low level of wages that are presently being paid to inmates in the Federal system while encouraging private industry to form working partnerships with local, State and Federal prisons. Such a situation would produce a profit bonanza for private industry and would encourage a wholesale displacement of workers in the free community for the cheap labor of prisoners. This result would be intolerable and would doom

this most noble effort before it got started. In fact, it would not even make sense to leave the wage decision to the Corporation's Board members, since that would be dominated by private industry and corrections officials. Therefore, it is mandatory that S. 1597 be amended to provide that inmates working under or through the Corporation for Prison Industries would be protected by the Federal minimum wage laws.

Kansas, Minnesota and Arizona have enjoyed success with their experiments with inmates working in private industry at the prevailing wage. In these States, inmate productivity was reported to be high and recidivism of the inmates who participated in the program was low.⁸

With the two amendments that we have proposed, S. 1597 could provide a real starting point for many inmates in Federal and State custody. It is hoped that the Corporation for Prison Industries can locate the funds and other resources necessary to make this a true national effort.

S. 1690

S. 1690 has the laudable purpose of requiring the States to provide all prisoners with a marketable job skill and basic literacy. Obviously the bill is aimed at improving job opportunities for prisoners once they are released and of decreasing the present rate of recidivism. This bill goes on to direct that the parole authority of the State "shall not release a prisoner sentenced under the law of the State to a term of two years or more... unless the State has met such obligation". Despite its laudable purpose, the bill specifically does not confer

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For a description of the Kansas program see Washington Post, September 3, 1981. See also, 18 U.S.C. 176 (c) and Wentworth v. Salem, 548 F.2d 773 (C.A.S.D. 1977)

a right on the prisoner to receive a marketable skill and basic literacy from the State.

As laudable as the bill's basic purpose is, we are compelled to oppose S. 1690 in its present form for several reasons. By forbidding the State parole authorities from granting a parole to a prisoner until after the prisoner has obtained a marketable skill and basic literacy, the prisoner will be further punished for the failures or shortcomings of the State. Obviously there is the expectation in every prisoner that he/she will have the opportunity to obtain parole after serving a statutory minimum sentence. Moreover, the Supreme Court has held that if parole is based upon statute, regulation or well-settled practice, due process requirements must be met when parole decisions are made.⁹

Parole decisions are generally premised upon the expiration of a statutory minimum sentence and the good conduct of the prisoner while incarcerated. Thus, a prisoner's parole is properly based upon what the prisoner does and what he/she proposes to do while on parole. Therefore, it would be inappropriate and illegal for the prisoner to be denied parole, once eligible, because of the failure of the State to provide the prisoner with a "marketable skill and basic literacy".

A basic question about this bill is, how is it to be enforced? The author makes it a point that a prisoner is not granted a right to receive a "marketable skill and basic literacy". In the absence of such an individually conferred right, a prisoner cannot go into a Federal or State Court to petition that Court to force the State to fulfill the obligation created under this bill. The bill, as drafted, does not specifically give the Attorney General's

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Greenholtz v. Inmates of Nebraska, 99 S.Ct. 2100 (1979)

Office or any other Federal or State agency the power to enforce this new obligation that is to be imposed upon the State. Thus, the bill, if passed, would be no more than a philosophical statement of Congress, having no force as a law. Such an act would be a cruel hoax on the over 500,000 prisoners in this country.

It appears that the author of the bill failed to review the U.S. Supreme Court recent ruling in Pennhurst v. Halderman.¹⁰ In that case the Court made clear, as a matter of legislative interpretation, that if the Congress intended the States to make large outlays of monies, then the Congress should make this obligation explicit in its legislation. In the absence of explicit language in this regard, the Supreme Court held that the States could not be obligated to spend massive sums of money to improve the conditions of a segment of the populous. The legislative deficiencies spoken to in Pennhurst v. Halderman are present in S. 1690 and would be held by the Court to be no more than wishes of Congress and carries no legal duties or obligations. In Pennhurst, the Court held that the language of the legislation must provide clear notice to the States as to what their obligations are.

We should stress once again that we are in support of a requirement that States provide inmates with marketable skills and basic literacy. Instead of the approach suggested in S. 1690, we would suggest that the Congress appropriate a specific sum of money that the States can use for demonstration projects and/or matching funds to aid the States providing such programs. The receipt of

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In Pennhurst v. Halderman, ___ S.Ct. ___, #79-1404 (April 20, 1981), the State of Pennsylvania challenged a ruling under the Developmentally Disabled Assistance and Bill of Rights Act, 42 U.S.C. §§6010 (1) and (2), which stated that mentally retarded persons had a right to appropriate treatment, services and habilitation in a setting that is least restrictive of personal liberty. This Act was enacted by Congress under §4 of the 14th Amendment.

these funds should be contingent upon the States' passing legislation conferring upon itself the obligation to provide marketable skills and basic literacy to its inmates. Such an approach was used successfully by the Congress to decriminalize juvenile status offenders.

An alternative approach would be for the Congress to impose the obligation of providing marketable skills and basic literacy upon the Federal government and then to appropriate funds to aid persons being held in Federal prisons. This could serve as a model program and the States could then be urged to adopt this approach.

Utilizing either approach would require that the affected inmates would have to receive the right to a marketable skill and basic literacy or that some Federal agency be explicitly given the right and power to enforce this obligation on either the State or Federal government.

Without some amending language, such as suggested above, S. 1690 should not be enacted into law.

Senator MATHIAS. And our final panel today, Mr. Patrick D. McManus, the secretary of corrections for Kansas, and Dr. Michael Sherman, director of justice and regulatory studies of the Hudson Institute.

Gentlemen, as in the other cases, your prepared statements will be made a part of the record, and I will ask you to be as brief as possible.

STATEMENT OF PATRICK D. McMANUS, SECRETARY OF CORRECTIONS, KANSAS, AND MICHAEL E. SHERMAN, DIRECTOR OF JUSTICE AND REGULATORY STUDIES, HUDSON INSTITUTE

Mr. McMANUS. Thank you, Mr. Chairman.

I am Patrick McManus, director of corrections from Kansas. I would appreciate it if you would let the good Senator from Kansas know that I am here to testify in support of one of his bills.

Senator MATHIAS. Not only will I let him know, but his staff is here, his eyes and ears. It will be reported to him before the echo of your words have died away.

Mr. McMANUS. I appreciate that, Mr. Chairman.

I would like to comment, particularly recognizing that time is short, on Senate bill 1597, which would establish a corporation for prison industries.

I would like to say at the outset that I strongly support the direction this bill is taking in trying to enlist the aid and expertise of the private sector in solving some of the monumental problems facing prisons today.

I have become convinced that a new partnership between government and the private sector is required if we expect to have any significant impact on the problem of inmate idleness and the resulting instability and turbulence which exists in our prisons.

Senator MATHIAS. Let me interrupt you, because it comes to mind right at this moment. In another context I sat through hearings in which we had economists appearing saying that within 10 years this country would be facing a serious labor shortage, that within 10 years we may be considering the importation of labor at the level in which we were importing it in the late 19th century, a half a million, three-quarters of a million people admitted for permanent residence every year.

Now, has that projection, whether it is right or wrong, has that projection been considered at all in the correctional field?

Mr. McMANUS. I am certainly no economist. I guess I would approach that same issue from the other direction; that is, that we currently have 350,000, in excess of 350,000 in State prisons alone which are essentially not a part of the productivity of this country. If we need additional labor, that would make the task all the easier, I would think, of trying to change that situation so that they can become productive.

Senator MATHIAS. It seems to me that if in fact we will have a labor shortage of that dimension or even a fraction of that dimension, that ought to be somewhere in the thoughts of those planning for these institutions.

Mr. McMANUS. As I describe one pilot program, still rather small, which we have operated in Kansas over the past 2 years, I think the model is there. I think it has been demonstrated that this kind of partnership between the private sector and the utilization of inmates as a part of the labor market can be brought to fruition.

The lack of meaningful activity for prisoners has long been recognized by correction professionals as a major security problem; and as our populations continue to increase, that problem gets more severe because the meager opportunities we have for meaningful activities for inmates have to be spread among an ever increasing number of prisoners.

Programs of inmate work have been viewed for a good many years in this country as the primary means of utilizing inmate energy and occupying inmates. In theory that sounds very appropriate. This country still operates along the lines of the work ethic, and that is a norm that we expect our citizens to adhere to.

In practice, however, what goes on in most prisons most of the time is quite different from what goes on in the free world marketplace. There are, first of all, never enough jobs to go around in prisons, so there is a staggering unemployment rate in correctional institutions. As serious as the unemployment rate may be in the rest of the economy, it pales in comparison to the idleness rate in prison where it is measured by rates of 40 to 60 percent and even higher.

Underemployment in prison is probably as serious a problem as unemployment. Issues like efficiency and productivity, which are the key elements in the operating of a successful real world business, have to take a back seat to the problems of keeping the inmates occupied.

In reality, we create a situation and expectations that are nearly opposite those that operate in real world work situations. Rather than preparing inmates to reenter the competitive, production-oriented real world work force, we merely reinforce poor work habits and unrealistically low expectations about job performance. It is not surprising that few inmates leave prison prepared to reenter the job market and compete in the world of work. And if they cannot succeed there, the temptation is strong indeed to return to a line of work with which they are more familiar, namely crime.

There are other problems that have prevented traditional correction industries from succeeding. Let me list them.

First of all, the institutional regimen in a prison almost always takes precedence over the demands of the workplace. Inmates are typically called from their jobs for head counts or disciplinary hearings or counseling sessions in a manner that would drive a normal businessman to despair.

Second, correctional industries, even if they are administratively separate from the prison administration, still amount to businesses run by Government. And in addition to the bureaucratic inefficiencies that seem inevitable when Government enters the picture, they are also insulated from the pressures and chemistry that make a private sector business work.

Third, one of the most serious impediments to the development of correctional industries has been the restriction placed on the sales of prison-made goods.

And finally, State governments are almost never willing to invest sufficient capital in prison industries so that they can be competitive and grow in a normal fashion.

I would suggest to you that what we need to change this rather dismal picture is the involvement of the private sector as the model, if not the manager, of correctional industries. We have had an experience with this model in Kansas, and I would like to describe it briefly, not because I see it as a panacea but rather because it is an example that demonstrates rather dramatically that things can be done differently and they can work.

About 2 years ago a sheet metal fabrication company was located in Leavenworth, Kans., about 2 miles away from the prison. It was moved there—and this makes it unusual—for the specific purpose of employing inmate labor. It was moved there by a private entrepreneur who had been very successful in business, and his motivation was not that of a do-gooder liberal wanting to give inmates a free ride, but rather that of a hard-nosed businessman who saw the tremendous amount of waste represented by the inmates in our penitentiary.

Let me describe to you what Zephyr Products is like as it exists today. First of all, we have about 40 inmates who are employed in the main Zephyr plant, which is located about 2 miles away from the penitentiary, and another 12 inmates working inside the walls on a paint line which we have leased to Zephyr Products. All of the inmates are paid at least minimum wage and are eligible for other bonuses and stock options. Each inmate is contributing to social security as well as paying Federal and State income taxes. Each inmate contributes \$35 a week in room and board to defray the

cost of operating the penitentiary. They buy their own lunch. They pay Zephyr \$1 a day for the bus ride from prison to work and back.

During the period of time Zephyr Products has been operating, the inmates have earned a total of almost \$354,000. Of that amount they have contributed over \$63,000 in employee withholdings. They have contributed close to \$74,000 toward defraying the cost of operating the penitentiary, and are contributing about \$1,700 per month to the support of their dependent families who would otherwise be relying on public assistance.

The company has never received one dime of Government subsidy. It operates totally as a private sector business. It handles all of the hiring, firing, and assignment of employees within the factory. And although it is still far from being profitable and is struggling like a lot of businesses are in this economy, it is making progress, and we are convinced it will succeed.

I cite our experience with Zephyr Products in support of Senate bill 1597 and the proposed corporation for prison industries.

Let me make this comment. One of the things I have learned in working with a great number of people from the private sector on this issue of prison industries is that there is a terrible suspicion and fear of Government within the business community.

I think it is important that the corporation be set up outside of existing governmental structure. I think if it becomes a part of any bureaucracy and is closely identified with Government, there will be such a lack of credibility as far as the private sector is concerned that it would be very difficult to get very much serious interest in developing programs such as the one I have described.

There are a couple of other specific suggestions that I would make relative to the bill, and I will not go into them here other than to mention that as I read the bill, it looks like it is more geared toward traditional correctional industries run by prison systems and not particularly focused on the possibility of private sector involvement. This relates to the lack of possibility, as I read it, for loans to be made directly to a private business that wanted to come into the prison.

If I could just very briefly address—

Senator MATHIAS. Make it very brief, because I am trying to save a minute for Dr. Sherman, and my coach is about to turn into a pumpkin here.

Mr. McMANUS. I will make it within 30 seconds.

On Senate bill 186 my opposition to 186 is not total. There are many good things in that bill. My concern is very similar to some of the testimony you have already heard; that if it means simply expanding the prison system, then I think it contributes to the misperception that there is a connection between the number of people we have in prison and crime.

The fact is that our current prison capacity would be adequate and more than adequate if we used it only to house violent, dangerous repeated offenders. The fact is we continue to incarcerate large numbers of people who could be handled in alternative settings if we had the sanctions, if those sanctions were enforceable and in fact enforced.

Senator MATHIAS. That, of course, is exactly the question I addressed to Mr. Nagel and Mr. Joyner who preceded you. I would

urge you to look at those economic projections on employment, because if there will be a surplus of labor or a shortage of labor in the future as against the surplus of labor we have today, I think it alters public attitudes toward your proposal.

Dr. Sherman.

Dr. SHERMAN Thank you, Senator.

My written statement is available and will be in the record, so there is no need to repeat it here.

Let me switch to a couple of specific comments—general comments about 186 and a couple of specific ones.

In general, I support 186. It is not a perfect bill, but I think it is a very good start in an area which has been too long neglected by Congress. And that is, whatever details I or other people may have on it, I think the most important thing is it is a very good start in a badly neglected area.

One of the best things about it is it takes a middle position. It tries to resolve and cut through a lot of the ideology that surrounds this issue.

The New York bond issue was mentioned earlier. There was a case—incidentally, the bond issue failed, and it failed in part because it was handled in a very ideological way on both sides. And this bill is, I think, a nice attempt to get what we need, which is a prison construction policy that meshes or tries to mesh liberal and conservative values.

I think it provides for a long-term perspective, and that is excellent. I think it also allows prison construction to be put into a broader context, because it is not just construction that is affected. It is sentencing, the amount of space available, and the type of space will influence who goes to prison, why, and what happens there.

And the only final point I would make beyond those in my prepared statement is that even if \$6.5 billion does not become available this year, what this bill does is puts in place a planning process which can be done a whole lot more cheaply than \$6.5 billion, which allows these long-term issues to be addressed and thought about in a systematic and careful way.

Therefore, I think it would be a mistake to concentrate only on the magnitude of the sums required to do the building and renovation. It is true it will be expensive to do that. I believe it is also necessary to do that. However, short of that, this administration which would be set up sets in place the mechanism for planning and doing these things in a systematic way; and that, I think, is one of the most important contributions of 186.

Thank you, sir.

Senator MATHIAS. Thank you very much.

I have two questions for you, but Senator Dole also had some questions he wanted me to submit, so I will submit my questions in writing along with his and ask you within 10 days if we could have your response for the record.¹

Thank you very much. I have been delighted to have both of you here.

Dr. SHERMAN. Thank you, sir.

¹ See appendix, p. 487.

[The prepared statements of Messrs. McManus and Sherman follow:]

PREPARED STATEMENT OF PATRICK D. McMANUS

Mr. Chairman, members of the Subcommittee, I appreciate the opportunity to share some thoughts with you on the three bills you are considering this morning. I will comment on all three bills, but would like first to focus special attention on S. 1597, a bill introduced by Senator Dole to establish a corporation for prison industries.

Let me say at the outset that I strongly support this effort by the Senator from Kansas to enlist the aid and expertise of the private sector in solving some of the monumental problems facing our prisons today. I have become convinced that a new partnership between government and the private sector is required if we expect to have any significant impact on the growing problem of inmate idleness and the resulting instability and turbulence in our prisons.

The lack of meaningful activity for prisoners has long been recognized by corrections professionals as a fundamental security problem. This problem is becoming more and more critical as our prison populations continue to explode and the already meager opportunities for meaningful activity must be shared among ever increasing numbers of inmates.

Programs of inmate work have been viewed for many years as the primary means of occupying inmates' time. In theory, at least, this would seem to be altogether appropriate. After all, the work ethic continues to be a dominant force in our citizens' lives. It remains a fundamental expectation that people get up in the morning and put in a full day of productive work. It is the reward for that labor, if not the work itself, that motivates people to contribute to the productivity of this nation.

In practice, however, what occurs in most prisons most of the time is quite different from what goes on in the free-world marketplace. There are never enough jobs to go around in prison and this results in a staggering rate of unemployment. As serious as the unemployment problem is in other sectors of our economy, it pales in comparison to the unemployment rates in our prisons where idleness is measured by rates of 40 or 50 or 60% or even higher. In a culture like ours, where our identity is in large part established by the work we do, the crushing impact of this idleness becomes apparent.

Underemployment in prison, however, is a problem perhaps as serious as unemployment. Prison administrators face a real dilemma. Without enough jobs to go around and with a need to keep as many inmates occupied as possible, there is a strong temptation to assign four or five inmates to a job that could easily be done by one. Issues like efficiency and productivity, which are key elements of operating a successful real-world business, need to take a back seat to the problem of keeping inmates occupied. In reality, we create a situation and expectations that are nearly opposite to those that operate in a real-world work situation.

Rather than preparing inmates to re-enter the competitive, production-oriented, real-world workforce, we merely reinforce poor work habits and unrealistically low expectations about job performance. It is not surprising that few inmates leave prison adequately prepared to successfully compete in the world of work; and, if they cannot succeed there, the temptation is strong indeed to return to a line of work more familiar to them, namely, crime.

Other problems have prevented traditional prison industries from creating an environment that truly prepares inmates to function successfully following their release. For example, the institutional regimen nearly always takes precedence over the needs of the work program. It is very difficult to ever get an uninterrupted eight-hour workday out of inmate employees. Inmates are typically called from their jobs for head counts, appearances at disciplinary hearings, counseling sessions, and so on, in a manner that would drive a normal businessman to despair.

Moreover, correctional industries, even if separated organizationally from an institution's administration, are still really businesses run by government. In addition to the bureaucratic inefficiencies that seem inevitable when government enters the scene, correctional industries become insulated from the pressures and incentives of the profit-motivated private sector. Salaries paid inmates are so low in most cases that they leave a correctional industries manager with little motivational leverage.

One of the most important impediments to the development of correctional industries has been the restrictions placed on the sale of inmate-made goods. With potential markets and available product lines so severely limited, it becomes very difficult for these industries to grow and develop normally. A final impediment is that state governments are almost never willing to invest sufficient capital in correctional industries and, in a business environment increasingly dependent upon capital to expand and grow, prison industries usually find themselves in the precarious position of merely hanging on and hoping to survive.

I would suggest to you that what is needed to change this rather dismal picture is the involvement of the private sector as the model, if not the actual manager, of correctional industries. We have had some experience with this model in Kansas and I would like to briefly describe it to you, not because it is a panacea, but because it is at least one example that demonstrates dramatically that things can be done differently and can work.

Nearly two years ago a private sheet metal fabricating company called Zephyr Products, Inc. opened up a new factory in Leavenworth, Kansas, a couple of miles away from the state prison. What makes this rather unusual is that Zephyr Products was moved to that location for the specific purpose of employing inmate labor in a normal private sector manufacturing operation. The founder of this company, Fred Braun, was a successful Kansas businessman who decided to turn his

considerable energies towards solving the problem of inmate idleness and underemployment at the Kansas State Penitentiary. His motivation was not that of a liberal do-gooder seeking to give inmates a free ride, but rather that of a hard-nosed businessman who saw the tremendous waste of talent and productivity represented by the inmates at our Penitentiary. The Kansas Legislature in 1978 had the foresight to pass legislation that allowed this kind of cooperative venture between the private sector and the Kansas Department of Corrections. I would be less than candid if I suggested to you that this enterprise came about simply and without any problems. There were literally hundreds of issues that needed to be addressed, negotiated, and resolved before the first inmate went to work at Zephyr Products; but I can say that the problems were solvable when the energies and good will of both groups were focused on them.

Let me describe the situation at Zephyr Products as it exists today. We now have nearly 40 inmates who are employed at the main Zephyr plant which is located away from the Penitentiary, and another 12 inmates who are working inside the walls at a paint line we have leased to Zephyr Products. All of the inmates are paid at least minimum wage and are eligible for other bonuses and stock options. Each inmate is contributing to social security as well as paying state and federal income taxes. In addition, each inmate contributes \$35 a week toward room and board, pays for his or her own lunch, and pays Zephyr Products for bus transportation to and from work each day.

During the period of time that Zephyr Products has been operating the inmates have earned a total of almost \$354,000. From that amount, inmates have contributed over \$63,000 in employee withholdings; have contributed close to \$74,000 toward defraying the cost of operating the Penitentiary; and are contributing almost \$1,700 a month to the support of their dependent families, who would otherwise be relying on public assistance.

The company has never received one dime of government subsidy. It operates totally as a private sector business, handles all the hiring, firing, and assignment of its employees within the factory. Although the company is still far from being profitable, it has made good progress for a new company just starting out during these very difficult economic times. It is still struggling, as many small businesses are, but it is growing and we are convinced it is going to make it.

Again, I would not want to point to Zephyr Products as the only, or necessarily, the best way to address some of the serious problems facing contemporary prisons. I would point out, however, that it is one approach that has, to this point at least, demonstrated a truly remarkable level of success.

I cite our experience with Zephyr Products in support of the direction represented by S. 1597 and the proposed corporation for prison industries. There are a couple specific suggestions I would make

that in my judgment would strengthen the bill. I would suggest that the language in Section 4, Paragraph 3, be modified to specifically allow loans to be made by the corporation directly to private businesses. If loans will be available only to "correctional systems", as the bill currently reads, the chances of attracting businesses inside correctional institutions will be very limited. Another potential problem is the 3% surcharge described in Section 8, Paragraph D, that would be paid in lieu of other taxes. If one considers the model represented by Zephyr Products, this 3% surcharge would probably counteract a marginal profitability of the business and serve as a disincentive for the private sector to become involved. While such a surcharge may be an appropriate way of replenishing the revolving fund if one were considering only traditional correctional industries, I believe the bill would be strengthened by allowing some provision for the more direct entry of the private sector into the operation of industries within prisons.

A final suggestion on S. 1597: as discussions continue about the shape the corporation for prison industries might ultimately take, I would urge that representatives of the private sector be invited and encouraged to enter into the discussion so that the resulting legislation can reflect not only the needs of prisons and corrections professionals but also meet the practical needs and realities of the business world.

I have a very brief comment to make about S. 1690, which aims to assure that prisoners have a marketable job skill and basic literacy before releasing them on parole. While the goal of this bill is certainly a laudable one, I know of no way to legislate such an outcome. I agree with the framers of the bill that prisons need to make available to inmates opportunities to obtain decent job skills and basic literacy, but the willingness to avail oneself of those opportunities remains the responsibility of the individual.

Mr. Chairman, I would also like to address S. 186, Senator Dole's bill to provide \$6.5 billion in federal aid to the states for construction and modernization of prisons, jails, and other criminal justice institutions. Although I am painfully aware of the grave problem of overcrowding facing our correctional institutions throughout this land, and in no way wish to understate the severity of that problem, nonetheless I believe that S. 186 represents the initiation of a federal policy that is ill-advised.

I am sure you all know of the rapidly increasing prison populations, particularly at the state level, and I will not recite those numbers for you again. The reasons for the increase in the number of people entering state prisons, and for the increasing length of time they are confined there, is not as mysterious as one might think. In reflecting the perceived mood of the country, state and local officials, especially state legislators, have responded by requiring increasingly harsher penalties for various crimes---and in this country harsher penalties seem inevitably to be equated with longer prison

sentences. One clear indication of this change is the extent to which states have recently altered their sentencing laws. In the past four years, 37 states have passed mandatory sentencing which removes judicial discretion about the type or length of sentence. Fifteen states have passed various forms of determinate sentencing which have normally resulted in longer sentences. In other places, where the change in policy is not clearly reflected in statutory change, it is discernible in the way both judges and releasing authorities have increased their reliance on imprisonment as a sanction for criminal offenses.

In any case, the changes in policy which have created prison overcrowding have been made at the state and local level. These decisions, which are not and ought not to be controlled by the Congress, are what determine how many people go to prison and for how long. This has a direct relationship to the cost each state incurs for building and operating its prisons. My concern about S. 186 is that, while the federal government has no control over these local and state decisions, this bill would in fact subsidize the resultant costs. In other words, if one state decides that it ought to have 30,000 of its citizens in prison, that is perfectly fine and that is the state's prerogative; but, it seems to me that it ought to also be that state's responsibility to pay for that decision. What S. 186 does, to some extent, is to take the states off the hook in terms of being fiscally accountable for their policy decisions. To the extent that the federal government enters into the financing of state correctional institutions, it is removing one of the checks that ought to be in place whenever policies are decided; namely, that if a policy costs money, that cost should be one of the considerations that decisionmakers use in determining whether it is a good or bad policy. Economics is not just an unfortunate and peripheral factor in those state policy decisions; it is and should be central to those decisions. For the federal government to eliminate or even diminish the cost consideration of policy determination at the state level is, I believe, ill-advised.

Another important consideration in the discussion of S. 186 is that federal approval of this kind of major expenditure for prison expansion would contribute, I think, to an already wide-spread misperception about the relationship of imprisonment to crime. One would expect that, for an expenditure of \$6.5 billion in new prisons, American citizens would end up being considerably safer than they are today. This is simply not the case. There is no evidence to suggest that a state's incarceration rate appears to have any affect at all on its crime rate. This is primarily because the people we end up incarcerating represent only a very small fraction of the people who are committing crimes.

When one looks at the various states, one finds a wide disparity in both their crime rates and their incarceration rates:

REPORTED CRIME RATE/100,000 FBI Uniform Crime Reports-1979		INCARCERATION RATE/100,000 U.S. Bureau of Justice Statistics-State Prisoners in 1979
North Carolina	4,372.5	255
Texas	5,925.3	196
Kansas	4,895.8	95
New Jersey	5,820.6	80

What is surprising about this is that states with a relatively high crime rate may have a low incarceration rate and vice versa. For example, New Jersey has almost as much reported crime as Texas, but New Jersey's incarceration rate is 60% lower than that of Texas. Kansas, my home state, has more reported crime than North Carolina but Kansas incarcerates at only about one-third the rate of North Carolina.

Comparing the United States to other nations is even more revealing. As you may know, we have the highest incarceration rate of any industrialized nation with the exception of the Soviet Union and South Africa. This cannot be attributed solely to differing crime rates. Rather, it reflects differing social policies as to how one best responds to those who violate the law. West Germany for example, has an incarceration rate of 60/100,000 which is less than half the U.S. rate of 138/100,000. Japan imprisons 35/100,000, or about half the rate of West Germany.

For years the discussion about how many people we imprison has divided Americans along ideological lines. I would suggest to you today that the issue is not nearly as ideological---not a question of being liberal or conservative---as is it economical. We are rapidly reaching the point where it is no longer a question of how much money we are willing to spend on prisons. Rather, the question becomes what percentage of our gross national product can we afford to spend on activities that return virtually nothing to our economy. We are investing an ever increasing amount of our gross national product in enterprises that are essentially non-productive. It is unlikely that prisons can ever be anything but a continual drain on the economy. The construction costs alone, which are enormous even in comparison with other federal expenditures, are only the beginning. Assuming a conservative 30-year life span of an institution, the construction costs represent, at most, about 10% of the total cost. Even with total federal assistance for construction, the states will still end up with an ongoing expense of anywhere from nine to ten times the cost of the initial expenditure.

Even aside from the question of whether the \$6.5 billion can be found in the federal budget, by passing this legislation the Congress would be a party to creating a much larger long-term financial liability on the part of the states. The question is, can we afford it? Not even do we want to afford it, but can we afford it? We also need to keep in mind that if we invest our limited governmental resources in this area we are going to have to take money away from some other,

probably more productive, endeavor. In the end, one must assume that state and local jurisdictions should retain not only the authority for local decisionmaking, but also the responsibility for making sure those decisions are economically sound and fiscally possible.

I appreciate that the motivation behind S. 186 is to help resolve the very real and critical problem of prison overcrowding in this country. It is important in attempting to find a solution, however, that we be certain we have accurately framed the problem. If the problem is that everyone who is currently in prison in this country needs to be there and that we have simply run out of space, then perhaps expanding our capacity to incarcerate even more is a logical solution. If, however, (and I believe this to be the case) we have become used to using prisons not only as our sanction of last resort but in many cases as the only really viable sanction available to the courts, then our solution might be quite different. We continue to incarcerate in this country not only the relatively small proportion of dangerous, violent, and repeat offenders, but an extraordinarily high number of people who could be appropriately dealt with differently if other sanctions were made available. I am not speaking here about programs of treatment or rehabilitation necessarily, but rather of sanctions that are available to the courts, that demand accountability from offenders for their wrongdoings, that are enforceable and, in fact, are enforced.

If there is to be a federal involvement in helping to resolve problems of crime at the state and local level, then I would suggest this as a far more fruitful area to explore. I believe that spending only a fraction of our current investment in prisons on other penalties and sanctions that are less expensive, but can still be made to work, would be far more productive than simply throwing more money into an approach that virtually everyone acknowledges has not worked.

Mr. Chairman, members of the Subcommittee, thank you for your kind attention. I would be happy to try to respond to any questions you may have.

PREPARED STATEMENT OF MICHAEL SHERMAN

I.

I am grateful for the opportunity to appear before you to support S.186. I have long believed that legislatures at all levels of government must take greater interest in, and responsibility for, the making of criminal justice policy. Questions of crime and punishment affect all Americans, and should not be left exclusively to appointed administrators; elected representatives of the people must give those administrators better guidance. Senator Dole and Senator Biden are to be congratulated on bringing this issue before the Congress. Whatever the destiny of the pending legislation, they have rendered a considerable service, as the Senator from Kansas argued in his floor statement to accompany S.186, in opening a dialogue on issues too seldom discussed by legislative bodies.

The central question about this legislation is "Should the federal government help the states and localities to build prisons and jails?" I am aware that S.186 provides for the construction of county courthouses, other criminal justice facilities of historical interest, and halfway houses and other diversion projects as well. Yet, I think the prison and jail question--and especially the prison question--is the one of overriding importance. The legislation points, quite correctly, to a correctional landscape which is very bleak in too many places. I shall confine my comments to the ways in which S.186 might or might not improve various features of that landscape.

Let me begin with three general comments about the intellectual and political background in which S.186 must be considered. First, there has been a tendency for various observers to regard this legislation as part of the fierce ideological debate that is raging around the country about criminal justice. Many have seen the issue here as whether the new Administration's first important criminal justice decision turns out to be a victory for the liberals or conservatives. While natural,

this is also regrettable. It has led to a polarized debate in which the right says "just build" and the left says, "don't build," and neither side shows much inclination either to compromise or to understand the very complex nature of what is at stake. My first observation is that, on a matter of this importance, a non-partisan, non-ideological stance will best serve the public interest. At the end of my statement, I have outlined one possible route, down the middle of the political road, to a position on prison construction that meshes elements of both liberal and conservative values.

My second comment concerns the need for a long range perspective on S.186. If it passes, in its current form or a revised one, this legislation will have effects and implications carrying well into the future. Once built, prisons in America last a long time: two-thirds of all of today's maximum security space is over 50 years old; and about 30 percent is over one hundred years old! Although there is a natural tendency to concentrate on the current and short term impact of any proposed legislation, in the case of prison construction you are also making policy for future generations. An attitude which takes account of contemporary problems but sets them in a long term perspective is necessary. It is especially important not to be panicked by a crisis mentality or excessively influenced by today's fashions on sentencing and correctional programs.

Third, I feel that the construction issue itself belongs in a much broader context than some observers of S.186 are using. Although the metaphor has been overused, prison construction is really just the tip of a very deep policy iceberg. This legislation goes well beyond the matching of a known number of prisoners to a certain amount of prison capacity or to certain standards of conditions. It will almost certainly affect, in many jurisdictions, not only how prisoners live in the future, but how many prisoners there are, who they are, what they go to prison for, and what kinds of help they get while locked up. Buried in an apparently straightforward decision about prison construction are many other implicit decisions about other aspects of criminal justice policy.

II.

Against that background, let me make some specific comments on the legislation as currently framed. It has many strong points. As noted above, it begins a national dialogue that is long overdue; in Senator Dole's words, it is, among other things, "a vehicle for drawing attention" to serious problems too long overlooked by the Congress.

Second, it recognizes and emphasizes the need for federal action in an area where too many states and localities have lagged badly. Both the federal judiciary, in its various findings of constitutional violations of prisoners' rights, and the federal executive, in its laudatory effort to formulate standards for prison and jail conditions, have taken important leads in recent years. This bill acknowledges that it is time for the federal legislature to support these initiatives toward humane and constitutional treatment of those who have violated the law. Furthermore, the legislation does not, even in an era of extreme budget cutting rhetoric, shrink from the realization that, to achieve these necessary ends, the federal government may be forced to spend money--possibly even a lot of money.

Third, however, the legislation shows an admirable concern for formal federalism and for informal but powerful "localist" sentiments and traditions in American criminal justice. Too often in recent years, federal interventions in various areas of social policy have seemed to say that Washington is the sole repository of wisdom. I think S.186 strikes a good balance between the need for federal initiatives and the need to rely ultimately on states and localities to apply them.

Finally, the bill isolates correctional conditions as the central problem to be rectified by any federal funding of state and local correctional construction. At one point, it uses the term "garish"; this is not too strong to describe some of what goes on in the nation's prisons and jails. One does not have to be able to prove that correctional riots are caused by poor conditions. It is enough to show, as every recent

major study has, that for a great many American citizens, punishment received for violations of the law exceeds not only what was provided by the criminal law, but also what is demanded by the U.S. Constitution and by common decency. Federal legislation should concentrate on rectifying the poor prison conditions. In my view, the spirit of S.186 meets this test. It should not--and it is my reading that S.186 does not intend to--simply try to provide money so that more state prison capacity of whatever kind can be built and a greater number of malefactors of whatever type can be locked up.

III.

Along with my broad support for S.186, I do have one major concern. Between the cup of federal spending and the lip of state and local use of money for correctional construction, a great deal can happen. In considering legislation such as S.186, the Congress must give close attention to the details of the spending scheme. Once the money starts to flow, its original intent to relieve overcrowding and improve prison conditions could easily be lost. To ward off this result, the design of the formula by which the funds are allocated is crucial. In this short statement, I can only mention some of the main possible diversions of S.186 money to other purposes. All stem in one way or another from the fact that the prison crowding problem exists in different degrees and ways in the various states. No pattern covers the entire nation uniformly; thus, we should not be surprised that it is difficult (perhaps even impossible) to find a single general formula by which Washington can spend money to uniformly good effect in relieving prison crowding and improving conditions.

I leave aside the problem of states and localities knowingly diverting funds to purposes other than improving prison conditions. The more difficult cases are those where the federal formula allows or induces policies and practices that do not reflect the bill's spirit. For example:

Consider the formula used in S.186. It has two basic elements:

without going into the details of percentages here, each state would receive funds based on (a) its general population, and (b) the volume of activity of its criminal justice system, and (c) its total expenditures on that system. The first potential drawback of this formula is that it is not really "targeted" on prison crowding. In many states, there is a weak link between the state's general population, how much it spends on criminal justice, the level of activity of its criminal justice system, and the extent to which its prisoners live in crowded or otherwise poor conditions. Nor, incidentally, does the concept of "activity" have any single obvious application; it could cover some or all of arrest rates, probation caseloads, court loads and backlogs, conviction rates, prison admissions, and parole caseloads.

The variety of relationships among these elements and prison crowding is tremendous, but no single national pattern emerges. There is no way that, by itself, this formula could ensure that S.186 money would be used to improve conditions. Most likely, the responses would be highly varied. Some states would use the money for its intended purpose; others would use it to build more prisons, many of which, if history is any guide, would themselves be overcrowded very soon; others would use the money for purposes legitimate under S.186 (i.e., historic preservation, or building of halfway houses), but without improving conditions in existing correctional facilities.

By itself, then, the funding formula in S.186 will not do the trick. In some places it would help improve conditions; in others, because it allowed new capacity to be added in states which have shown an indifference to the need for humane and constitutional conditions, it might make things worse. In many states it would have no effect on conditions one way or the other.

What more is necessary? The framers of the legislation have demonstrated an awareness that a need for something more exists. In Section 204 they provide that the administrator of the proposed Criminal Justice Facilities Administration consult with the other appropriate federal

agencies and then "by regulation prescribe basic criteria to be applied by the state agency" which spends the S.186 funds. Among others, such basic criteria shall provide:

1. The general manner in which the State agency will determine priority of projects;
2. general standards of construction and modernization for criminal justice facilities of different classes and in different types of locations.

Now, clearly, there is the potential in these provisions for ensuring that S.186 construction money is used to improve existing prison conditions. The administrator could simply make this a "basic criterion" for the use of the funds, the amount of those funds having been determined by the formula described above. However, this approach goes back to my original point: the legislators should give the administrator clear guidance, and perhaps even a mandate. The Congress is taking up this issue for good reasons; it should take the steps necessary to ensure that the legislation is informed in practice by those reasons.

How could this be done? One possibility is a guideline inserted into the bill to the effect that, except in unusual specified circumstances (e.g., where old facilities continue temporarily in use while new ones are being added), the use of S.186 money should not increase the total capacity of the state system. This should affect both the funding formula by which money is apportioned among states, and the basic criteria by which the administrator regulates state use of the money.

I am aware that this is a controversial recommendation. It will be attacked by critics on both sides of the debate. I am rejecting the advice of both the "don't build" and the "just build" schools. I am saying "You must build, but with specific constraints and for specific purposes." These constraints, I believe, are the only way to ensure that S.186 will have the intended effect of ameliorating prison conditions in as many jurisdictions as possible.

IV

S.186 represents a sensibly moderate position in an unfortunately polarized debate. It is worth emphasizing that some of S.186's critics, on both the left and the right, oppose it on grounds having little to do with correctional conditions. These critics are concerned principally with the size of the inmate population, rather than the conditions in which inmates live. The left thinks that, because the sanction of incarceration is overused, there are "too many" inmates; they believe too many offenders are locked up when other non-incarcerative punishments would be sufficient or even preferable. In its extreme form, this view is espoused by the National Moratorium on Prison Construction, which is apparently gambling that the absence of construction money will result in smaller inmate populations. For reasons I shall be happy to discuss with you, I think this gamble serves poorly both the public interest and the interests of the inmates it purports to protect.

On the extreme right, critics of S.186 demand that legislation should concentrate on providing more capacity to increase the inmate population, rather than worrying much about forcing individual states to conform to someone else's view of what constitutes acceptable conditions.

My own view is that the issue of population size begs the prior question of its composition. "How many prisoners should we have?" is a question that cannot be answered in the abstract. One must first ask "Who belongs in prison?" and then see how much we are willing to pay to apply the answer. In general, those who belong in prison are those who are physically dangerous to others. There are of course exceptions which cannot be analyzed here. But broadly, I support adjustments in sentencing policy which concentrate prison capacity on the violent offender. Thus, my solution to the "size problem" is to move the threshold, locking up larger numbers of violent offenders and fewer non-violent ones. Revisions in sentencing practice which followed this principle would yield the

flexibility necessary to spend S.186 construction funds to improve the conditions of an inmate population about the same size as today's. As the President's Task Force on Violent Crime has said, "The provision of assistance in building or renovating correctional facilities need not necessarily mean that the total capacity of institutions be increased; but rather that there be the most appropriate use of available space." With the Task Force's observation as a guideline, we can begin the search for a consensus definition of "the most appropriate use of available space." This difficult exercise is a necessary next step in any discussion of S.186.

Senator MATHIAS. The committee stands adjourned, subject to the call of the Chair.

[Whereupon, at 12:40 p.m., the hearing was adjourned.]

APPENDIX

PROPOSED LEGISLATION

97TH CONGRESS
1ST SESSION

S. 186

To provide financial assistance to the States to undertake comprehensive criminal justice construction programs to improve the criminal justice system of the States, to provide that the Secretary of the Treasury is authorized to make interest subsidy payments on criminal justice facility construction bonds, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 21 (legislative day, JANUARY 5), 1981

Mr. DOLE introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To provide financial assistance to the States to undertake comprehensive criminal justice construction programs to improve the criminal justice system of the States, to provide that the Secretary of the Treasury is authorized to make interest subsidy payments on criminal justice facility construction bonds, and for other purposes.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 That this Act may be cited as the "Criminal Justice Con-
- 4 struction Reform Act".

1 TITLE I—FINDINGS AND DEFINITIONS

2 DECLARATION OF POLICY

3 SEC. 101. The Congress finds that—

4 (1) the amount of criminal justice activity within
5 the States continues to increase;6 (2) the physical plants and institutions serving
7 State and local criminal justice are becoming increas-
8 ingly overloaded and obsolete;9 (3) a relatively small amount of State and local
10 resources are available to modernize, assist, replace,
11 upgrade, and expand criminal justice facilities;12 (4) in the case of correctional facilities many in-
13 mates are being housed in conditions which fail to
14 meet the constitutional tests for humane treatment;15 (5) court facilities particularly at the county level
16 are well over one hundred years old and are in desper-
17 ate need of restoration, preservation, or replacement;18 (6) police training and operational facilities are
19 often obsolete or inadequate;20 (7) a relatively small amount of Federal financial
21 assistance has been made available for the construction
22 or improvement of criminal justice facilities in contrast
23 to a large amount of Federal financial assistance for
24 other public institutions such as hospitals, sewage
25 treatment systems, highways, airports, institutions of

1 higher education, parks, and public works of all kinds,
2 such as dams and soil conservation projects;

3 (8) some of the construction for criminal justice
4 facilities is obsolete before the construction is complet-
5 ed, and other construction of criminal justice facilities
6 does not follow advanced practices for the design and
7 suitability of such facilities;

8 (9) State and local resources applied to the con-
9 struction and improvement of criminal justice facilities
10 are grossly inadequate and in some instances are just
11 not available;

12 (10) Federal financial assistance from a variety of
13 sources available for the construction improvement of
14 criminal justice facilities have been made available
15 without comprehensive planning designed to determine
16 the relevance of the facilities to criminal justice needs
17 to future crime trends or population projections; and

18 (11) the quality, efficiency, effectiveness, and dig-
19 nity of justice has been severely affected by the lack of
20 adequate resources for the construction and improve-
21 ment of criminal justice facilities.

22 DEFINITIONS

23 SEC. 102. As used in this Act—

24 (1) The term "Administration" means the Crimi-
25 nal Justice Facilities Administration.

1 (2) The term "Administrator" means the Admin-
2 istrator of the Criminal Justice Facilities Administra-
3 tion.

4 (3) The term "correctional facility" means any
5 prison, jail, reformatory, workfarm, detention center,
6 pretrial detention facility, community-based correction-
7 al facility, halfway house, or other institution designed
8 for the confinement or rehabilitation of individuals
9 charged with or convicted of any criminal offense, in-
10 cluding juvenile offenders.

11 (4) The term "construction" includes the prepara-
12 tion of drawings and specifications for criminal justice
13 facilities; erecting, building, acquiring, altering, remod-
14 eling, improving, or extending such facilities; and the
15 inspection and supervision of the construction of such
16 facilities. The term does not include interest in land or
17 offsite improvements.

18 (5) The term "criminal justice" means activities
19 pertaining to crime prevention, control, or reduction, or
20 the enforcement of the criminal law, including, but not
21 limited to, (A) police efforts to prevent, control, or
22 reduce crime or to apprehend criminals, including juve-
23 niles, (B) activities of courts having criminal jurisdic-
24 tion, and related agencies (including but not limited to
25 prosecutorial and defender services, juvenile delinquen-

1 cy agencies, and pretrial service or release agencies),
2 (C) activities of corrections, probation, or parole au-
3 thorities and related agencies assisting in the rehabili-
4 tation, supervision, and care of criminal offenders, and
5 (D) programs relating to the prevention, control, or re-
6 duction of narcotic addiction and juvenile delinquency.

7 (6) The term "criminal justice facilities" in-
8 cludes—

9 (A) court facilities;

10 (B) law enforcement facilities including facili-
11 ties used for police training;

12 (C) facilities used for the prosecution of
13 criminal offenses and for public legal defender
14 activities;

15 (D) facilities used for probation or parole au-
16 thorities or for preadjudication and postadjudica-
17 tion of offenders or for the supervision of parolees;

18 (E) facilities used for juveniles who have
19 been adjudged delinquent or who are neglected ju-
20 veniles awaiting trial or for juveniles receiving
21 care or treatment;

22 (F) facilities used for the treatment, preven-
23 tion, control, or reduction of narcotic addiction;

24 (G) correctional facilities; and

1 (H) any other facility used for any criminal
2 justice purpose in the State.

3 (7) The term "facilities" includes any buildings
4 and related facilities, initial equipment, machinery, and
5 utilities necessary or appropriate for the criminal jus-
6 tice purpose for which the particular facility was
7 constructed.

8 (8) The term "modernization" means any program
9 or project designed to improve the operation of crimi-
10 nal justice facilities in any State including but not lim-
11 ited to projects designed to improve the care of and the
12 rehabilitation of individuals subject to the criminal jus-
13 tice system.

14 (9) The term "State" means each of the several
15 States, the District of Columbia, the Commonwealth of
16 Puerto Rico, Guam, American Samoa, the Virgin Is-
17 lands, the Trust Territory of the Pacific Islands, and
18 the Northern Mariana Islands.

19 (10) The term "unit of general local government"
20 means any city, county, township, town, borough,
21 parish, village, or other general purpose political subdi-
22 vision of a State, an Indian tribe which performs law
23 enforcement functions as determined by the Secretary
24 of the Interior, or, for the purpose of assistance eligi-
25 bility, any agency of the District of Columbia govern-

1 ment or the United States Government performing law
2 enforcement functions in and for the District of
3 Columbia.

4 TITLE II—GRANTS FOR THE CONSTRUCTION
5 AND MODERNIZATION OF CRIMINAL JUS-
6 TICE FACILITIES

7 PROGRAM AUTHORIZED

8 SEC. 201. The Administrator of the Criminal Justice
9 Facilities Administration is authorized to make grants to
10 States in accordance with the provisions of this title for the
11 construction and modernization of criminal justice facilities
12 beginning October 1, 1982, and ending September 30, 1988.

13 ALLOTMENT

14 SEC. 202. (a)(1) From the sums appropriated pursuant
15 to section 314 for each fiscal year, the Administrator shall
16 allot not more than 3 per centum thereof among the Com-
17 monwealth of Puerto Rico, Guam, American Samoa, the
18 Virgin Islands, the Trust Territory of the Pacific Islands, and
19 the Northern Mariana Islands according to their respective
20 needs.

21 (2) From 85 per centum of the remainder of such sums,
22 the Administrator—

23 (A) shall allot to each State an amount which
24 bears the same ratio to 50 per centum of such 85 per

1 centum as the number of individuals in such State
2 bears to the number of individuals in all States, and

3 (B) shall allot to each State an amount which
4 bears the same ratio to 50 per centum of such 85 per
5 centum as the volume of activity of the criminal justice
6 system and the total expenditures on the criminal jus-
7 tice system for that State for the year preceding the
8 year for which the determination is made, determined
9 in accordance with criteria established by the Adminis-
10 trator, bears to the volume of activity of the criminal
11 justice systems and the expenditures on the criminal
12 justice systems for all States.

13 For the purpose of this paragraph, the term "State" does not
14 include the Commonwealth of Puerto Rico, Guam, American
15 Samoa, the Virgin Islands, the Trust Territory of the Pacific
16 Islands, and the Northern Mariana Islands.

17 (3) The remainder of the sums appropriated pursuant to
18 section 314 shall be used by the Administrator to carry out
19 the provisions of section 206, relating to demonstration
20 grants.

21 (b) The portion of any State's allotment under subsec-
22 tion (a) for a fiscal year which the Administrator determines
23 will not be required, for the period such allotment is availa-
24 ble, for carrying out the purposes of this title shall be availa-
25 ble for reallocation from time to time, on such dates during

1 such period as the Administrator may fix, to other States in
2 proportion to the original allotments to such States under
3 subsection (a) for such year, but with such proportionate
4 amount for any of such other States being reduced to the
5 extent it exceeds the sum which the Administrator estimates
6 such State needs and will be able to use for such period for
7 carrying out such portion of its State application approved
8 under this Act, and the total of such reductions shall be simi-
9 larly reallocated among the States whose proportionate
10 amounts are not so reduced. Any amount reallocated to a
11 State under this subsection during a year shall be deemed
12 part of its allotment under subsection (a) for such year.

13 (c)(1) The population of a State and of all States shall
14 be determined by the Administrator on the basis of the most
15 satisfactory data available to the Administrator.

16 (2) The volume and activity of a criminal justice system
17 of a State and the total expenditures of a State and for all
18 States shall be determined by the Administrator after estab-
19 lishing criteria for measuring such volume, activity, and ex-
20 penditures.

21 STATE PLANS

22 SEC. 203. (a) Any State desiring to receive its allotment
23 of Federal funds under this title shall submit a State plan for
24 a seven-year period, with such annual revisions as are neces-
25 sary, which is consistent with such basic criteria as the Ad-

1 administrator may prescribe under section 204. Each such plan
2 shall—

3 (1) provide for the administration of the plan by a
4 State agency which is generally representative of State
5 agencies and agencies of units of general local govern-
6 ment concerned with the criminal justice system in
7 that State;

8 (2) sets forth a comprehensive statewide program
9 for the construction and modernization of criminal jus-
10 tice facilities within the State;

11 (3) provide satisfactory assurance that the control
12 of funds granted under this title and title to property
13 derived therefrom shall be in a public agency for the
14 uses and purposes provided in this title and that a
15 public agency will administer such funds and property;

16 (4) provide assurances that the State agency will
17 pay from non-Federal sources the remaining costs of
18 the program for which application is made;

19 (5) provide a comprehensive statewide plan for
20 criminal justice programs to be carried out in the facili-
21 ties for which assistance is sought under this title;

22 (6) provide assurances that, in order to improve
23 the operation of the criminal justice system within that
24 State, projects assisted under this title will incorporate

1 innovations and advanced techniques in the design of
2 such facilities;

3 (7) provide assurances that the personnel stand-
4 ards and programs of the institutions and facilities
5 which will be assisted under this title will reflect ad-
6 vanced practices;

7 (8) provide assurances, in the case of criminal jus-
8 tice facilities that are correctional institutions, that the
9 State will encourage the modernization of prison indus-
10 try and work-release programs to be conducted in facil-
11 ities assisted under this title;

12 (9) provide assurances, in the case of any criminal
13 justice facility that is a landmark or has historic signifi-
14 cance, that the State will encourage renovation and re-
15 modeling of such a facility;

16 (10) provide assurances that, to the extent practi-
17 cal, criminal justice facilities will be used for other
18 criminal justice purposes if they are no longer used for
19 the specific purpose for which they were built, with
20 particular emphasis upon neighborhood justice centers
21 and substation houses for law enforcement personnel;

22 (11) provide assurances that the State will, to the
23 extent permitted by State law, encourage the use of
24 convict labor in projects assisted under this title;

1 (12) provide assurances that the State will take
2 into account the needs and requests of units of general
3 local government in the State and encourage local ini-
4 tiative in the development of projects for the construc-
5 tion and renovation of criminal justice facilities not as-
6 sisted under this title;

7 (13) provide for appropriately balanced allocation
8 of funds between the State and units of general local
9 government within the State and among such units for
10 projects for the construction and modernization of
11 criminal justice facilities;

12 (14) provide for appropriate review of procedures
13 of actions taken by the State agency disapproving an
14 application for which funds are available or terminating
15 or refusing to continue financial assistance to units of
16 general local government or any combination of such
17 units for assistance under this title;

18 (15) demonstrate the willingness of the State and
19 any units of general local government to assume the
20 costs of improvements assisted under this title after a
21 reasonable period of Federal assistance;

22 (16) demonstrate the willingness of the State to
23 contribute technical assistance or services for projects
24 described in the plan and for projects contemplated by

1 units of general local government or combinations of
2 such units contemplated by the plan;

3 (17) set forth policies and procedures designed to
4 assure that Federal funds made available under this
5 title will be so used as not to supplant State or local
6 funds, but to increase the amounts of such funds that
7 would in the absence of such Federal funds be made
8 available for the construction and renovation of criminal
9 justice facilities in the State;

10 (18) provide for such fund accounting, auditing,
11 monitoring, and evaluation procedures as may be necessary
12 to assure fiscal control, proper management,
13 and disbursement of funds received under this title; and

14 (19) provide for the maintenance of such data and
15 information, and for the submission of such reports, in
16 such form and at such time and containing or accompanied
17 by such information as the Administrator may
18 reasonably require.

19 (b) The Administrator shall approve any State plan and
20 any modification thereof only if—

21 (1) the State plan, or modification, complies with
22 the requirements set forth in subsection (a); and

23 (2) the Administrator determines that the program
24 set forth in the State plan contributes to encouraging

1 advanced practices in the administration of criminal
2 justice within the State; and

3 (3) the State plan or modification contains assur-
4 ances that all State and local criminal justice officials
5 within the State will cooperate in carrying out the pro-
6 visions of the plan or modification.

7 BASIC CRITERIA

8 SEC. 204. As soon as practicable after enactment of this
9 Act, the Administrator shall, after consultation with the
10 heads of other appropriate Federal agencies, by regulation
11 prescribe basic criteria to be applied by the State agency
12 under section 203. In addition to other matters, such basic
13 criteria shall provide—

14 (1) the general manner in which the State agency
15 will determine priority of projects based upon (A) the
16 relative needs of the area within such State for crimi-
17 nal justice facilities, (B) the relative ability of the par-
18 ticular public agency in the area to support a program
19 of construction or modernization, and (C) the extent to
20 which the project contributes to an equitable distribu-
21 tion of assistance under this Act within the State; and

22 (2) general standards of construction and modern-
23 ization for criminal justice facilities of different classes
24 and in different types of location.

1 LIMITATION ON OTHER PROGRAMS INVOLVING THE CON-
2 STRUCTION OR MODERNIZATION OF CRIMINAL JUS-
3 TICE FACILITIES

4 SEC. 205. (a) Whenever any project constructed with
5 assistance under an Act set forth in subsection (b) of this
6 section involves the construction or modernization of a crimi-
7 nal justice facility in excess of \$500,000 then, notwithstand-
8 ing any other provision of law, the construction or modern-
9 ization of such facility shall be—

10 (1) consistent with the master plan submitted
11 under section 203 of this Act; and

12 (2) comply with the advanced practices required
13 under clause (7) of such section 203.

14 (b) The provisions of subsection (a) of this section apply
15 to—

16 (1) the Public Works and Economic Development
17 Act of 1965,

18 (2) the Consolidated Farm and Rural Develop-
19 ment Act,

20 (3) title I of the Housing and Community Devel-
21 opment Act of 1974,

22 (4) the National Historic Preservation Act of
23 1966,

24 (5) the Omnibus Safe Streets and Crime Control
25 Act of 1968,

1 (6) the Juvenile Justice and Delinquency Preven-
2 tion Act of 1974, and

3 (7) chapter 319 of title 18, United States Code,
4 relating to the National Institute of Corrections.

5 DEMONSTRATION GRANTS

6 SEC. 206. (a) From sums reserved pursuant to section
7 202(a)(3), the Administrator is authorized to make grants
8 and to enter into contracts with States for the conduct of
9 demonstration projects designed to test—

10 (1) the applicability of advanced practices to the
11 design, construction, and modernization of criminal jus-
12 tice facilities, and

13 (2) the need for the construction and moderniza-
14 tion of criminal justice facilities in order to improve the
15 administration of criminal justice in the States.

16 (b) No grant may be made and no contract may be en-
17 tered into under this section unless an application is made to
18 the Administrator at such time, in such manner, and contain-
19 ing or accompanied by such information as the Administrator
20 may reasonably require.

21 CLEARINGHOUSE ON THE CONSTRUCTION AND
22 MODERNIZATION OF CRIMINAL JUSTICE FACILITIES

23 SEC. 207. The Administrator shall establish and operate
24 a clearinghouse on the construction and modernization of
25 criminal justice facilities, which shall collect and disseminate

1 to the public information pertaining to the construction and
2 modernization of criminal justice facilities, together with
3 ways of using the construction program to improve the ad-
4 ministration of the criminal justice system within each State.
5 The Administrator is authorized to enter into contracts with
6 public agencies or private organizations to operate the
7 clearinghouse established or designated under this section.

8 INTEREST SUBSIDY FOR CRIMINAL JUSTICE FACILITY

9 CONSTRUCTION BONDS

10 SEC. 208. (a) The Secretary of the Treasury is author-
11 ized to pay to any State or political subdivision thereof which
12 issues obligations described in section 103(a) of the Internal
13 Revenue Code of 1954 which are issued as part of an issue
14 substantially all of the proceeds of which are to be used to
15 provide criminal justice facilities such amounts as may be
16 necessary to reduce the cost to the issuer of such bonds to a
17 rate of interest not in excess of 5 per centum per annum.
18 Such payments shall be made only upon application of the
19 issuer made in such form, in such manner, and at such time
20 as the Secretary may require.

21 (b) Payments under subsection (a) may be made in ad-
22 vance, by installment, or in any other manner determined by
23 the Secretary to be appropriate under the circumstances, and
24 may be made on the basis of estimates, if necessary, with
25 corrections in later payments to the extent necessary to com-

1 pensate for overpayments or underpayments arising out of
2 errors of estimate or otherwise.

3 (c) There are authorized to be appropriated to the Sec-
4 retary of the Treasury such sums as may be necessary to
5 carry out the provisions of subsection (a).

6 (d) The payment, by the Secretary of any amount under
7 subsection (a) to a State or a political subdivision thereof,
8 shall not affect the status of any such obligation under section
9 103 of such Code, nor shall it cause the interest thereon to be
10 excludable only in part under such section.

11 TITLE III—ADMINISTRATION PROVISIONS

12 ESTABLISHMENT OF ADMINISTRATION

13 SEC. 301. (a) There is established an agency within the
14 Department of Justice to be known as the Criminal Justice
15 Facilities Administration.

16 (b)(1) The Administration shall be headed by the Ad-
17 ministrators who shall be appointed by the President, by and
18 with the advice and consent of the Senate. Under the super-
19 vision and direction of the Attorney General the Administra-
20 tor shall be responsible for the exercise of all of the functions
21 of the Administration and shall have authority and control
22 over all activities and personnel of the Administration.

23 (2) There shall be in the Administration a Deputy Ad-
24 ministrators who shall be appointed by the President, by and
25 with the advice and consent of the Senate. The Deputy Ad-

1 ministrator shall perform such functions as the Administrator
2 may prescribe and shall be acting Administrator during the
3 absence or disability of the Administrator or in the event of a
4 vacancy in the Office of the Administrator.

5 FUNCTIONS OF THE ADMINISTRATION

6 SEC. 302. In order to carry out the purposes of this
7 Act, the Administration shall—

8 (1) make grants to States for the construction and
9 modernization of criminal justice facilities in accord-
10 ance with title II;

11 (2) provide for the widest practical and appropri-
12 ate dissemination of information obtained from the pro-
13 grams and projects assisted under this Act; and

14 (3) prepare and submit a report to the President,
15 for transmittal to the Congress, at least once each year
16 on the activities and programs of the Administration,
17 together with such recommendations, including legisla-
18 tive recommendations, as the Administrator deems
19 appropriate.

20 ADMINISTRATIVE PROVISIONS

21 SEC. 303. (a) The Administrator is authorized, in carry-
22 ing out his functions under this Act, to—

23 (1) appoint and fix the compensation of personnel
24 of the Administration;

1 (2) employ experts and consultants in accordance
2 with section 3109 of title 5, United States Code;

3 (3) appoint one or more advisory committees com-
4 posed of such private citizens and officials of Federal,
5 State, and local governments as he deems desirable to
6 advise him with respect to his functions under this Act;

7 (4) promulgate such rules, regulations, and proce-
8 dures as may be necessary to carry out the functions
9 vested in the Administrator or in the Administration,
10 including the establishment of priorities to be applied
11 by each applicant State in implementing its State plan,
12 and delegate authority for the performance of any func-
13 tion to any officer or employee under his direction and
14 supervision;

15 (5) utilize, with their consent, the services, equip-
16 ment, personnel, information, and facilities of other
17 Federal, State, local, and private agencies and instru-
18 mentalities with or without reimbursement therefor;

19 (6) without regard to section 529 of title 31,
20 United States Code, to enter into and perform such
21 contracts, leases, cooperative agreements, or other
22 transactions as may be necessary in the conduct of his
23 functions, with any public agency, or with any person,
24 firm, association, corporation, or educational institu-

1 tion, and make grants to any public agency or private
2 nonprofit organizations;

3 (7) accept voluntary and uncompensated services,
4 notwithstanding the provisions of section 665(b) of title
5 31, United States Code;

6 (8) request such information, data, and reports
7 from any Federal agency as the Director may from
8 time to time require and as may be produced consistent
9 with other law; and

10 (9) arrange with the heads of other Federal agen-
11 cies for the performance of any of his functions under
12 this title without reimbursement and, with the approval
13 of the President delegate and authorize the redelega-
14 tion of any of his functions under this Act.

15 (b) Upon request made by the Administrator each Fed-
16 eral agency is authorized and directed to make its services,
17 equipment, personnel, facilities, and information (including
18 suggestions, estimates, and statistics) available to the great-
19 est practicable extent to the Administration in the perform-
20 ance of its functions.

21 (c) Each member of a committee appointed pursuant to
22 paragraph (3) of subsection (a) of this section shall receive
23 \$125 a day, including traveltime, for each day he is engaged
24 in the actual performance of his duties as a member of a
25 committee. Each such member shall also be reimbursed for

STATISTICS AND SURVEYS

PAYMENTS

(d) Payments under this section may be made in installments, in advance or by way of reimbursement with necessary adjustments on account of overpayments or underpayments.

1 NONDISCRIMINATION PROVISION

2 SEC. 306. (a) No person in any State shall on the
3 ground of race, color, religion, national origin, or sex be ex-
4 cluded from participation in, be denied the benefits of, or be
5 subjected to discrimination under or denied employment in
6 connection with any programs or activity funded in whole or
7 in part with funds made available under this Act.

8 (b) The provisions of paragraphs (2) through (4) of sec-
9 tion 815(c) of the Omnibus Crime Control and Safe Streets
10 Act of 1968 (as amended by the Justice System Improve-
11 ment Act of 1979) shall apply to the administration of sub-
12 section (a) except that all references to the Office of Justice
13 Assistance, Research, and Statistics shall be construed to be
14 the Administration.

15 WITHHOLDING

16 SEC. 307. Whenever the Administrator, after reason-
17 able notice and opportunity for a hearing to any State,
18 finds—

19 (1) that there has been a failure to comply sub-
20 stantially with any requirement set forth in the plan of
21 that State approved under section 203;

22 (2) that there has been a failure to comply sub-
23 stantially with any requirement set forth in the applica-
24 tion of a locality approved pursuant to the State plan;
25 or

1 (3) that in the operation of any program or project
2 assisted under this Act there is a failure to comply
3 substantially with any applicable provision of this Act;
4 the Administrator shall notify such State of his findings and
5 that no further payments may be made to such State under
6 this Act (or in his discretion that the State shall not make
7 further payments under this Act to specified localities affect-
8 ed by the failure) until the Administrator is satisfied that
9 there is no longer any such failure to comply, or the noncom-
10 pliance will be promptly corrected. The Administrator may
11 authorize the continuance of payments with respect to any
12 program or project assisted under this Act which is being
13 carried out pursuant to such State plan and which is not
14 involved in the noncompliance.

15 RECOVERY OF PAYMENTS

16 SEC. 308. If within twenty years after completion of
17 any construction for which Federal funds have been paid
18 under this Act—

19 (1) the owner of the facility shall cease to be a
20 State or local public agency; or

21 (2) the facility shall cease to be used for the pur-
22 poses (including any designated alternative purpose
23 specified in the State plan) for which it was construct-
24 ed, unless the Administrator determines in accordance
25 with regulations that there is good cause for releasing

1 the applicant or other owner from the obligation to do
2 so;
3 the United States shall be entitled to recover from the appli-
4 cant or other owner of the facility an amount which bears to
5 the then value of the facility (or so much thereof as constitut-
6 ed an approved project or projects) the same ratio as the
7 amount of such Federal funds bore to the cost of the facility
8 financed with the aid of such funds. Such value shall be de-
9 termined by agreement of the parties or by action brought in
10 the United States district court for the district in which the
11 facility is situated.

12 REVIEW AND AUDIT

13 SEC. 309. The Administrator and the Comptroller Gen-
14 eral of the United States, or any of their duly authorized
15 representatives, shall have access for the purpose of audit
16 and examination, to any books, documents, papers, and rec-
17 ords of a grant recipient that are pertinent to the grant
18 received.

19 NONAPPLICATION OF PRISON INDUSTRY PROVISIONS

20 SEC. 310. (a) The provisions of section 1761 of title 18,
21 United States Code, shall not apply to goods, wares, or mer-
22 chandise manufactured, produced, or mined by convicts or
23 prisoners participating in a program or project assisted under
24 this Act if the convicts or prisoners—

1 (1) have, in connection with such work, received
2 wages at a rate which is not less than that paid for
3 work of a similar nature in the locality in which the
4 work was performed, except that such wages may be
5 subject to deductions which shall not, in the aggregate,
6 exceed 80 per centum of gross wages, and shall be
7 limited as follows:

8 (A) taxes (Federal, State, local);

9 (B) reasonable charges for room and board as
10 determined by regulations which shall be issued
11 by the Chief State correctional officer;

12 (C) allocations for support of family pursuant
13 to State statute, court order, or agreement by the
14 offender; and

15 (D) contributions to any fund established by
16 law to compensate the victims of crime of not
17 more than 20 per centum but not less than 5 per
18 centum of gross wages;

19 (2) have not solely by their status as offenders,
20 been deprived of the right to participate in benefits
21 made available by the Federal or State government to
22 other individuals on the basis of their employment,
23 such as workmen's compensation, but such convicts or
24 prisoners shall not be qualified to receive any payments
25 for unemployment compensation while incarcerated,

1 notwithstanding any other provision of the law to the
2 contrary; and

3 (3) have participated in such employment volun-
4 tarily and have agreed in advance to the specific de-
5 ductions made from gross wages pursuant to this sec-
6 tion, and all other financial arrangements as a result of
7 participation in such employment.

8 (b) The first section of the Act entitled "An Act to pro-
9 vide conditions for the purchase of supplies and the making of
10 contracts by the United States, and for other purposes", ap-
11 proved June 30, 1936 (49 Stat. 2036; 41 U.S.C. 35), com-
12 monly known as the Walsh-Healey Act, is amended by
13 adding after "section 1761(c) of title 18, United States
14 Code" a comma and the following: "or the provisions of sec-
15 tion 309(a) of the Criminal Justice Construction Reform
16 Act".

17 DONATION OF SURPLUS PROPERTY

18 SEC. 311. Section 203 of the Federal Property and Ad-
19 ministrative Services Act of 1949 is amended by adding at
20 the end thereof the following new subsection:

21 "(o)(1) The Administrator is authorized, upon the rec-
22 ommendation of the Administrator of the Criminal Justice
23 Construction Administration, to donate surplus property to
24 any State for the construction and modernization of criminal
25 justice facilities assisted under the Criminal Justice Con-

4 “(2) For the purpose of this subsection, the term ‘State’
5 has the same meaning as specified in section 3(9) of the
6 Criminal Justice Construction Reform Act.”.

23 SEC. 314. (a) There are authorized to be appropriated
24 \$500,000,000 for the fiscal year 1982, and \$1,000,000,000

- 1 for the fiscal year 1983 and for each of the succeeding fiscal
- 2 years ending prior to October 1, 1988.
- 3 (b) Funds appropriated pursuant to subsection (a) of this
- 4 section shall remain available until expended.

○

ADDITIONAL STATEMENTS FOR THE RECORD

NAVCO

XXXXXXXXXXXXXXXXXXXX
1318 Vincent Place

• McLEAN, VIRGINIA 22101 • 703-356-9500

June 24, 1981

The Honorable Robert J. Dole
United States Senate
Washington, D. C. 20510

Dear Senator:

While we clearly understand the need for criminal justice construction programs, as addressed in S-186, and applaud Mr. Richard C. Conklin's testimony on June 8 before The Senate Judiciary Committee about alternate methods of treating offenders, we wish to call to your attention a specific proposal, directly involving physical plant but focusing on what is done with prison inmates while jailed. It is important that NAVCO's proposal be considered concurrently with architectural planning to ensure that future or rebuilt facilities will include specially designed (perhaps convertible) spaces for effective inmate training.

Specifically, by appropriate training facilities and programs, there is the possibility of accomplishing, to an as yet undeterminable degree, four desirable objectives:

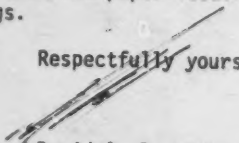
1. Reduction of turbulence in prison populations;
2. Rehabilitation;
3. Lowering costs of operating facilities by enabling prisoners to pay, at least partly, for their upkeep;
4. Payment of restitution to victims.

NAVCO's approach and rationale is set forth in the attached Training in Prison - Exit from the Maze.

Our credentials for speaking to the subject of training include 20 years experience in educational planning (including tandem work with architects on physical facilities). In the Washington area, we planned the FBI Training Academy, the American College of Cardiology's "Heart House," among others. Our clients have included U. S. Government agencies, foreign governments, private business, industrial, commercial and university institutions here and abroad.

We respectfully suggest that the implications of Training in Prison - Exit from the Maze on requirements for training facilities be included as a policy provision of S-186 and that the paper itself be included in the official record of the hearings.

Respectfully yours,


David A. D. Wilson, Ph.D.
President

TRAINING IN PRISON - EXIT FROM THE MAZE

STATEMENT BY DAVID A. D. WILSON, Ph.D.

PRESIDENT, NAVCO

MR. CHAIRMAN: My name is David A. D. Wilson, and I am president of NAVCO, an educational planning consulting firm with headquarters in McLean, Virginia. My firm during the past 20 years has worked with architects, in planning numerous training facilities, including the FBI Training Academy and the American College of Cardiology's "Heart House" in the Washington area.

Moreover, our planning includes curriculum development, teaching methodology and, when analysis indicates the need, educational technology, such as computer assisted training programs.

I appear in support of S. 186, a measure as timely as the newspaper headlines that describe the appalling overcrowding in the nation's prisons it is designed to alleviate.

NAVCO as an organization wishes to associate itself with the statement by Mr. Richard G. Conklin, Chairman of the Committee on Architecture for Justice of the American Institute of Architects, who testified before the Committee on June 8. Our proposal goes beyond the brick and mortar, glass and steel of the penal institutions to their utilization - and in a manner calculated to reduce, over time, the demand for prison cells. In essence, we urge that the planning for training facilities be incorporated into the architectural plans - not adapted after the building is completed. Such facilities could be utilized for training both prison guards and inmates and so designed that they could be utilized for other purposes as well.

Mr. Chairman, we believe that NAVCO's proposal, if incorporated into S. 186, would be in conformity with the suggestion of Chief Justice Warren Burger in his widely quoted commencement address on May 24, 1981 at George Washington University.

The time is ripe, the Chief Justice declared, "to create a national

academy of corrections to train personnel much as the FBI has trained local and state police. This is especially needed for the states, which have no real training resources available. The academy should also provide technical assistance to state and local institutions."

He went on to urge a second step over a longer period of time.

"We should introduce or expand two kinds of educational programs in the prisons. The first would be to make certain that every inmate who cannot read, write, spell and do simple arithmetic would be given that training - not as an optional matter but as a mandatory requirement. . . Without these basic skills, what chance does any person have of securing a gainful occupation when that person is released and begins the search for employment - with the built-in handicap of a criminal conviction?"

For the longterm prisoner Chief Justice Burger recommended greatly expanded mandatory vocational training in the skilled and semi-skilled crafts. He suggested shortened sentences as one means of providing motivation.

"Just as good behavior credit is now allowed to reduce sentences, we should allow credit on sentences for those who cooperate by learning. We should help them learn their way out of prison."

Although independently conceived, NAVCO's training program for prison inmates is fully in accord with the recommendations of Chief Justice Burger.

In my opinion, Mr. Chairman, no other measure offers so great a hope as S. 186 for providing - through educational training in the penal system - a truly triumphal escape from the prison maze.

Training in Prison - Exit from the Maze

To train for the sake of training, whether one refers to prison inmates, high-school drop-outs, or Egyptian fedayeen, makes little sense. One trains, if it is done rationally, toward specific objectives.

In the prison inmate context, training should be directed toward rehabilitation, behavior modification, and -- most importantly, since we are talking about people in serious trouble now and likely to cause more for themselves and others "outside" later on -- re-direction of prisoners

into potentially self-supporting (productive) persons with marketable skills. Such a training program would provide strong motivation for them to live as law-abiding citizens following release.

We can suggest a systematic analytical approach, not to the whole subject, but to prison inmate training directed at specific objectives, certainly a part of the larger problem. We term our approach, "Needs Analysis". Its purpose is to find out what is now known, or thought, or has been the result of past and current experience.

Several steps are necessary to accomplish this.

1. Detailed study of previous and current experience in prison training, not mainly from books and reports, but "on the ground," interviewing prison officials, guards, teachers and inmates.

2. Careful review of relevant local, State and Federal penal laws. This would include interviews with judges, criminal lawyers, probation officers, social workers, psychologists, psychiatrists, penologists, and possibly others.

3. Additional study (based on 1 and 2) of what the possibilities are of developing training courses which could provide motivational and practical "real life" alternatives to substantial dead-end warehousing of criminals, to their stifling boredom, and to human stagnation by trying to modify attitudes, through the therapy of work which can develop practical, tested, money-producing skills. From this study should come accurate observations ("conclusions" may be too optimistic a word) on the probabilities of job-preparing knowledge and skill-transfer in the prison environment.

4. Based on the above data, a "needs analysis" of what kinds of training are: (a) most likely to be suited to inmates' qualifications; (b) in short-supply in the job-market; (c) money-producing skills in prison (where local, State and Federal laws permit work and pay); and (d) therapeutic to the inmates in doing-something-with-a-future vs. serving time. Definitely a consideration in this analysis will be the possibilities for inmate-produced income for victim restitution and as a contribution to a criminal's own

maintenance costs. Certainly, if an inmate can be trained to a money-producing skill which produces income while in prison, some part of that should go toward reducing society's tax bill.

5. If, from the studies and analysis suggested, some realistic training seems likely to be more than marginally productive in skills, in motivation, in hope for prison inmates' own present and future lives, then we have considerable confidence, based on twenty years' experience, that we can create training programs that will achieve agreed objectives, once those have been determined.

Such a detailed study, beginning with the "needs analysis," is well within our firm's capabilities, resources and experience. Educational Planning is NAVCO's business. In proposing a project to develop training plans for prison inmates that would result from agreed objectives and lead, pragmatically, to some reasonable expectation of at least modest success in rehabilitation, we would be facing problems similar to others that we have successfully solved.

NAVCO has a long record of practical field experience with tough educational and training problems in other cultures - and the prison culture may prove to be as foreign as some within which we have worked in Third World countries.

Examples: Assumptions

We assume three categories of basic knowledge of English and general experience in living.

1. Unskilled: lacking all but the barest oral language ability and little but home- and street-experience.
2. Semi-skilled: ability to communicate vocally, and read, at moderate (7th-8th grade) levels of English, and some school attendance which "took" to a minimum degree.
3. Definite potential: A newspaper reading vocabulary with apparent native intelligence, mated with ignorance of almost everything not connected with home- and street-life; in other words, little knowledge outside the daily business of living.

4. Not yet projectable as a category: There must be fairly large numbers of prison inmates of much higher educational, language, knowledge and intellectual levels than the assumed groups above. Theirs would not ordinarily be a severe educational problem, although they may suffer disqualifying deficiencies psychologically, in (drug-induced and other) brain-damage or fundamental social hostilities. At this point, without specific data, we have no examples to suggest for them. That they might have considerable potentialities for development seems probable. That these "high-IQ" inmates may now form the nuclei of trouble-making groups seems possible, too.

Random Examples

1. Unskilled: Equipment maintenance and repair. We have taken totally ignorant, unskilled, frequently illiterate, and in many cases apathetic laborers (in Kenya, Brazil, India and Tanzania) and designed courses which turned out Jeep drivers and repair mechanics. In their own communities, these "graduates" became not only productive, but proud and notable celebrities to their peers, "upwardly mobile" as sociologists use the term.

In prisons, such trainees could (a) gain motivation to go another day, another week, or however long, with something challenging to look forward to, and (b) have incentive to improve their vocabularies and English language as tools to further learning. Perhaps, too, they would have less time to brood about short-cuts to parole, antagonism to guards and other prisoners, planned or fantasied violence inside or outside the prison walls. More, inside or out, they might come to see meaningful alternatives to going back to whatever life they came out of: perhaps broken homes, poverty, racial discrimination, alcoholism, drug-addiction and drug-pushing, other "easy-money" criminal pursuits, or whatever probably criminal plans they might be making.

2. Semi-skilled: as defined above: Electronics assembly, troubleshooting and maintenance.

Sometimes the training has to be at an extremely rudimentary level: "Take this thing, put it there, and then do that with it." Our experience

has shown, however, a mathematical and logical cast of mind, exceptionally but not rarely, in seemingly unlikely individuals. Where this is uncovered, challenges and opportunities for training and education spring-up, mushroomlike.

3. Definite potential: Computer-programming, basic to advanced office skills, agricultural specialties, social work. In this category, many other possibilities for upgrading workers, given motivation, tend to surface.

If I may, Mr. Chairman, I would like to offer a few observations.

1. Where penal law permits, could not maintenance and repair of prison and police heavy-equipment, trucks and patrol cars be both training-on-the-job and cost-reductive?

2. A staple in NAVCO educational and vocational training plans is that the most adept course-graduates form a pool from which peer instructors can be chosen. Whether it is peer-instructing that comes first, or whether the most able pupils begin to show leadership qualities because of their new prominence, we do not know. But the phenomenon occurs frequently, carrying with it for the individual a sense of pride and personal worth that noticeably makes some men stand out as they did not before. They become "up" to their peers, a source of pride to themselves and to distinction among their "colleagues." Peer instructors are usually hard task-masters and effective teachers.

3. The crucial factor is likely to be the selection of the inmate trainees. Selection can be made a sought-for privilege, earned by spelled-out behavior. The experience and help of prison officials, guards, social workers, psychologists and psychiatrists in choosing trainees would be essential.

NAVCO's Interest

Mr. Chairman, we are training and educational planners. We sell our experience, our knowledge and our services, not equipment of any kind. We do not market prepared course materials.

1. NAVCO's programs are based on specific needs, agreed training objectives between the client and us, and meticulous application of our experience in planning proper course materials, teaching methods and training technology, where required.

2. NAVCO's experience over twenty years has been with U. S. Government agencies, foreign governments, private clients (industrial, commercial, business, schools and universities) here and abroad.

3. Our record is one of creating educational and training programs that meet specified needs, are complete, meet budget limitations and do what they were invented to do: Succeed.

Clearly, we are talking about a field in which we have not yet had direct experience. Unless proven otherwise by a "needs analysis," we can see no problem in training prison inmates that is different in nature or kind from many other difficult projects we have taken on. That there may be unforeseen stumbling blocks seems likely. But short of trying, proof is impossible, pro or con.

Mr. Chairman, we believe that we have constructive ideas to offer, on a solid basis of experience and performance. We hope that our proposed program will be incorporated in S. 186.

Thank you for the privilege of testifying before the Committee.

STATEMENT OF THE HONORABLE RON DE LUGO

BEFORE THE

SENATE JUDICIARY SUBCOMMITTEE ON CRIMINAL LAW

Mr. Chairman:

I appreciate this opportunity to submit testimony to your Subcommittee on S. 186, the "Criminal Justice Construction Reform Act." Passage of this bill would provide a much-needed boost to our nation's efforts to eradicate crime, and I commend you and Senator Dole for taking a leading role on this matter.

I have one major concern, however, regarding Section 202 (a) (1) of the bill which limits to 3 percent of the authorization the amount of money that will be made available to the U.S. Territories for the construction and modernization of criminal justice facilities. I believe this limitation is arbitrary, unnecessary, and somewhat discriminatory, and I respectfully request that this section of the bill be amended to read "no less than 3%" - a far more equitable provision.

In the U.S. Virgin Islands our need for Federal money is particularly acute, especially when it comes to dealing with the problems generated by youth crime. Earlier this year our local government made plans to spend approximately \$3 million to construct a new juvenile pre-trial detention center. Decisions were also made to construct two new detentional facilities one on St. Thomas and one on St. Croix.

To mitigate the effects of the Administration's budget and tax cuts, however, the plans for the detention centers had to be put on a back-burner, and this concerns me greatly. As in other jurisdictions we have an increasing problem with juvenile crime in the Virgin Islands. Without pre-trial detention centers where immediate steps can be taken to give these youngsters the proper counseling they need, and without separate juvenile detention centers, that juvenile crime rate will continue to escalate.

Currently, some of these young offenders must, for lack of proper facilities, be placed with hardened adult criminals. We all know what happens in that kind of situation, Mr. Chairman. Case after Case can be cited in which a young person, jailed for a relatively minor crime and incarcerated with hardened criminals with years of nefarious experience, leaves only to eventually commit a more serious crime, having been well-educated in all the wrong trades.

We simply must have proper facilities for these young offenders where they can be educated in the right trades; where they can learn to put their potential to the betterment rather than the detriment of society.

The real crime here, Mr. Chairman, is for society to deprive these youngsters of any real chance for rehabilitation. Under the formula currently incorporated in S. 186, it is highly unlikely we would be able to secure funding to begin construction of these badly needed youth facilities.

In addition to planning for facilities for young offenders, we have now begun construction on a new criminal justice complex in St. Thomas to house adult criminals. This will relieve some of the burdens that is now being felt by our only prison which is located on St. Croix. The effects of the budget cuts, however, will again affect this project and a shortfall of funds is expected very soon.

Suffice it to say that I believe that the Virgin Islands could use Federal Assistance at a more substantial level than the one contemplated in S. 186. We should not be subject to an arbitrary ceiling on funds for the construction of correctional facilities. Our need is just as great, if not greater, than most jurisdictions in the United States.

Therefore, I respectfully request that the Virgin Islands have access, as a state, to whatever funds are authorized on the basis of need and population. Amending the bill to read not less than 3% would secure at least a guaranteed amount of funds and would enable us to argue the case for additional funding as warranted.

PREPARED STATEMENT OF ERNEST VAN DEN HAAG

I will address first the need for additional prisons; second, S.186 as a means to provide them.

Opponents of prison building insist that "expanded prison capacity won't reduce crime." This is akin to saying that 'expanded hospital capacity won't reduce illness.' It would, if all other things remained equal; and it does, compared to the rate of sickness, or crime, that would otherwise occur.

Although unaware of it, opponents of added prison space implicitly admit as much--and contradict themselves--by proposing that non-violent criminals be diverted to non-prison controls, but that violent criminals be incarcerated. Why should the latter be incarcerated if not to reduce the rate of violent crime? and if incarceration does reduce the rate of violent crime, how come it does not reduce the rate of non-violent crime?

The purposes of incarceration (if one discounts rehabilitation) include incapacitation, justice (retribution), and deterrence. None of these is served by the proposed alternatives to imprisonment which defeat justice, do not incapacitate (and thus permit recidivism), and do not deter others. There is no evidence that rehabilitation, as a result of deliberate efforts, can be fostered in or out of prison. Since the crime rate continues to rise and obviously will not be reduced by non-incarceration of convicts, additional prison space is absolutely required if prisons are to fulfill constitutional requirements. At the present time only a very small percentage of felons are imprisoned. Not much more than two percent of all felonies committed in the United State lead to imprisonment. If that percentage is to be increased--and it clearly is much too low--additional prison space is indispensable. Even if the percentage is merely to be maintained, additional space is needed in view of the increase in felonies.

I now turn to S.186 as a means to provide more prison space.

The cost of building prison space varies from state to state, and in most cases seems far higher than necessary. The bill, therefore, should (but does not) include a provision ordering that the percentage of the total cost paid by the federal government through this bill should rise the lower the building cost per cell, in such a way that the minimum subsidy is 20% and the maximum 80%.

I now turn to some specific objections. The bill should be (but is not) confined to subsidizing the building of increased prison capacity.

P. 4, lines 7,8, include in the definition of correctional facility "halfway houses and institutions designed for rehabilitation." P. 5, lines 15-17, include "facilities used for probation or parole authorities." None of these inclusions seem justified. All may lead to funds being used for purposes other than building prison space. There is no evidence that halfway houses, rehabilitation efforts, probation or parole are at all conducive to reductions of the crime rate and deserve a federal subsidy.

P. 11, lines 5, 6, speak of "advanced practices" undefined. Line 10 proposes work release programs. These have been notably ineffective and criminogenic, and should not be federally subsidized.

P. 11, lines 22-24, provide that the state may not encourage the use of convict labor if contrary to state law. In this instance, I suggest that federal law ought to supersede state law.

P. 27, lines 3-5, make participation in convict labor voluntary. I do not see wherein this is justified.

V I T A

Dr. Ernest van den Haag

Studied: Universities of Florence, Naples and Sorbonne;
M.A., State University of Iowa; Ph.D., New York University.

Presently: John M. Olin Professor of Jurisprudence and
Public Policy, Fordham University. Psychoanalyst in private
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Distinguished Scholar, The Heritage Foundation, 1980-82.

Formerly: Adjunct Professor of Law, New York Law School;
Lecturer in Sociology and Psychology, New School for
Social Research. Adjunct Professor of Social Philosophy,
New York University; City College of New York; Graduate
Division, Brooklyn College; Seminar in American Studies;
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Minnesota, Colorado, Nevada; Vassar College; Queens Col-
lege, The City University of New York; School of Criminal
Justice, State University of New York at Albany. Fellow,
American Sociological Assn., Royal Economic Society. Gug-
genheim Fellow, 1966; Senior Fellow, National Endowment for
the Humanities, 1972.



Washington Office

November 18, 1981

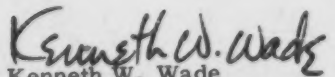
The Honorable Charles McC. Mathias, Jr.
Chairman, Subcommittee on Criminal Law
Senate Committee on the Judiciary
162 Russell Senate Office Building
Washington, D. C. 20510

Dear Chairman Mathias:

The Board of Supervisors of Alameda County, California, has a keen interest in the "Criminal Justice Construction Reform Act" (S. 186) which your subcommittee is scheduled to consider on November 19th. They have given concrete expression to that interest in the enclosed "Position Statement" and seek your acceptance of the statement for inclusion in the hearing record.

The Board of Supervisors has asked me to express their appreciation to you for arranging the hearing on this landmark measure and urge your support of the Act.

Sincerely,


Kenneth W. Wade
Washington Representative

KWW/cjm
Enclosure

1735 New York Avenue • Suite 503 • Washington, D. C. 20006 • (202) 785-0414

POSITION STATEMENT
OF THE ALAMEDA COUNTY, CALIFORNIA, BOARD OF SUPERVISORS
REGARDING S. 186
"CRIMINAL JUSTICE CONSTRUCTION REFORM ACT"

Following is a statement of our position on the need for Federal funding assistance for criminal justice system facilities construction and/or renovation.

S. 186, as proposed by Senator Dole, would appropriate over \$5 billion over the next six years for urgently needed criminal justice facilities, most notably, detention and rehabilitation centers. We heartily support such a measure in light of our County's increasing incidence of violent crime, our severely overcrowded and inadequate detention facilities, and our State's post-Proposition 13 fiscal crisis, which precludes a local comprehensive financial assistance program of this nature.

Alameda County's need for additional pretrial detention facilities is severe and well documented. Most of our present pretrial prisoners are housed at Santa Rita Rehabilitation Center in inadequately secured, wood frame barracks, originally constructed as a Navy brig in 1944. Only sixteen of Santa Rita's beds meet Minimum Jail Standards. Prisoners are regularly assigned to mattresses placed on day room floors. These facts, together with the increasingly violent behavior of pretrial detainees, have led to an explosive situation:

- o During 1980, there were 21 felony assaults by inmates against staff, 45 felony assaults of inmates against inmates, and 215 misdemeanor assaults by inmates against inmates within the prison. This does not

- 2 -

include suspected assaults which were unreported or undetected.

- o In 1981, there have been 50 attempted suicides to date, of which five have resulted in death by hanging.
- o Since 1975, there have been 91 significant fires set by inmates at our Santa Rita facility, including two fires causing over \$500,000 in damages.
- o In the past three years, the necessity of placing pretrial prisoners, normally classified as maximum security risks, in the minimum security Santa Rita compound has led to 128 escapes.
- o Our Superior Court judges are reluctant to sentence criminals to Santa Rita due to its overcrowding and failure to meet constitutional and other, more obvious tests for humane living conditions. As a result, an inordinate number of violent and repeat offenders are released on probation in our County each year.

Alameda County, according to the State Bureau of Crime Statistics, is the most felony-ridden county in California. Although the County has spent over \$19.4 million in capital funds on adult detention facilities since 1973, and is currently constructing a \$20 million pretrial facility in Oakland, the demand for jail cells continues to greatly outweigh the supply. In addition, we have spent nearly \$17 million over the past three years on alternatives to incarceration such as work furlough programs and drug abuse counseling centers. However, if current trends continue, by 1990 our pretrial prisoner population will be nearly 50% greater than bed capacity.

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The State of California Board of Corrections is in the process of awarding \$40 million in jail construction grants to local governments within the State. However, that amount is miniscule compared with the great need in almost every county in our State for more secure, humane, and effective rehabilitation centers. With pending Federal reductions in block grant funding for health and welfare programs, it would be impossible to further reduce State-wide spending in those areas in order to fund jail construction. Hence, the largest, most urbane counties, where violent crime is most prevalent, in fact have the fewest prospects of raising the necessary funds for building adequate criminal justice system facilities.

Alameda County has a complete set of plans and specifications for a pretrial detention facility with 394 beds, currently estimated to cost \$33,143,680. Operating costs after completion of construction are estimated at \$8 million per year. It must be obvious to those in Federal government that local governments cannot budget for such large expenditures without Federal assistance, particularly when other Federal funding is being reduced.

Our County has a strong commitment to upgrading the quality, efficiency and effectiveness of criminal rehabilitation facilities. However, our lack of available resources stands in the way of progress toward this goal. We urge you to support the Criminal Justice Construction Reform Act.

Signed this 12th day of November, 1981

Joseph P. Bort, Chairman
Board of Supervisors
County of Alameda, California

STATEMENT BY CONGRESSMAN ROBERT H. MICHEL
HOUSE REPUBLICAN LEADER

November 19, 1981

MR. CHAIRMAN. Thank you for offering me this opportunity to testify on behalf of a program for job training in the private sector that I think is both promising and worthwhile.

Although this legislation deals with the Corporation for Prison Industries, I want to call the Committee's attention to Phoenix Industries, a program operating successfully in Peoria for almost seven years, which teaches those on probation or parole the basic rudiments necessary to qualify for a job in industry. The concentration of the program is on job skills and the work ethic.

The program was founded as a result of the dedication and hard work of Judge John Holtzman and Julia Sommer, a volunteer who now serves as executive director.

The Phoenix program began with six participants. There are now over 40 youths in training at Phoenix. Most commonly they are referred to Phoenix from the criminal justice system or other community based agencies. Some participants are walk-ins.

Each applicant is carefully screened and reviewed for eligibility. If accepted into the program they are given on-the-job training and paid for their work.

During the training which lasts an average of six months, the trainee learns at least eight basic skills that will qualify him for an entry-level industry job.

More than just job skills are taught. A crucial element of the program is development of the work ethic. If a trainee does not master promptness, quality work and co-worker cooperation, he or she will not last at Phoenix Industries. This philosophy translates into success. Over 60 percent of those who complete the program find gainful employment.

The most obvious result to the community is the tax savings. In Illinois, it costs over \$15,000 to incarcerate a person for a year. The average per person expenditure for the CETA program is \$22,000. The

program at Phoenix costs \$5,700 per enrollee, of which only \$2,280 is federal money. In its first year, Phoenix Industries had an operating budget of \$83,000, of which 98 percent was federal funds. But as the size of Phoenix grew, its dependency on federal money decreased. In Fiscal Year 1980, the total operating budget was \$656,000, 40 percent of which was federal money.

Phoenix anticipates being financially self-sufficient in the near future. There is no better example of how the federal government can encourage private initiative and then withdraw from the scene.

Phoenix Industries is a business, not a governmental agency. It submits bids to private industries for subcontracting jobs. Since these jobs are non-technical, Phoenix Industries often completes work that private industry can't or won't. These jobs include sandblasting, painting, packaging and derusting. Through their work, Phoenix Industries is able to supplement the majority of their operating costs and provide a service to industry as well.

Phoenix Industries keeps the responsibility of job training in the hands of private industry, where it belongs. For many years, we have attempted to solve employment problems through totally public job and training programs. This is not the answer. The strength of our economy lies in the private sector. It is the talents of people like Judge Holtzman and Ms. Sommer that make programs like Phoenix Industries work. Throwing taxpayers' money at these problems, crossing our fingers and hoping it will work doesn't work.

A number of cities have contacted Phoenix Industries expressing an interest in setting up a similar program in their area. In every case, local industries have promised their support. But although it would take only three years for such a program to become self-sufficient, start up money is still needed. I think the Congress should explore the feasibility of a couple of pilot programs across the country.

Phoenix Industries encourages private sector responsibility. The program saves money, provides a needed service and gives troubled youths a second chance in life. What more could one ask?

STATEMENT OF TOMMIE JACKSON, DIRECTOR
MAYOR'S COORDINATING COUNCIL ON CRIMINAL JUSTICE, BALTIMORE, Md.
November 19, 1981

Mr. Chairman, Members of the Committee:

Good morning and thank you for inviting me here to speak this morning on the subject "prison construction." As you know, the issue of correctional facility building is age old-the issue is not novel.

Like many State correctional facilities throughout our country, local jails are under court orders to improve their physical plants, to eliminate double-celling and to reduce populations. This is a big order, especially for many major cities, which contain disproportionate numbers of the elderly, the poor and criminal offenders.

Federal Court dictums mandating various conditions are never accompanied by the monies necessary to comply with the court directives. Local government is presently faced with a dilemma --

- Does it ignore the court's order and face the consequences of operating its jail in contempt of the court?
- Does it relieve overcrowding by closing its jail entrance doors and risk endangering the public safety?
- Does it reduce basic services to those who need them most in order to acquire the capital needed to improve dilapidated facilities or build new ones?

Of course, the answer to all three questions is an emphatic NO, the consequences are too severe.

Local government budgets are hit hardest by inflation, recession, Federal and State budget cuts, unemployment and caring for this nation's needy. The funds required for capital improvements to existing facilities or for the development of new jails are unavailable.

The situation in Baltimore City is not unique. The Baltimore City Jail has been located at its present site since 1801. One of the original buildings is still in use. Since 1801, improvements and construction have been made on an "as needed basis" balanced against other City responsibilities and tempered by budgetary restraints.

Many services provide to inmates at the Baltimore City Jail are the result of Federal Court action. These services are required of the modern jail, but are costly to initiate and maintain. However, past Federal funding programs were healthy and provided seed monies to start the court ordered programs, many of the programs no longer exist.

A lawsuit filed in 1972, protested conditions at the Jail and its lack of inmate services. This suit resulted in a court order which called for the creation of social work positions, psychologists, various intake procedures, a library and disciplinary guidelines for the Jail residents. To comply with this Federal Court Order, Federal and State matching funds were requested and provided. One result was the creation of the Jail's Reception, Diagnostic and Classification Center.

In response to substantial overcrowding, a second major lawsuit was filed, challenging conditions at the Jail. This new lawsuit resulted in yet another Federal Court Order that mandated the City to eliminate double-cell occupancy, as well as specifying additional improvements in services provided to inmates. Among the measures being developed to reduce the Jail's population are plans for the expansion of our community-based work release centers and a conversion of a service building into housing space.

Both of the above described Federal Court Orders directed substantial changes in the operation and physical plant of our Jail. However, the earlier case was less difficult to implement, because assistance from the Federal and State governments was available and provided the majority of the funds required. Now, because of the death of the LEAA and with no replacement funding source in sight, we are left, alone, to improvise. And improvise we must, because there are no monies in our City's operating budget, or for that matter in our tax base to cover new construction for a jail.

Though I would like to, I am not asking the Federal Government to pick up the bill for all Federal Court Orders placed upon local jails, but I am asking you to remember us in whatever formula is decided for passing Federal funds to the States for prison construction.

Although not publicized, the condition of local jails is just as deplorable as those of State prisons. At the local level of government, the needs are very real because it is often the initial level of incarceration.

Let me give you a feel for the type of person being housed at the Baltimore City Jail. Residents fall into a number of classifications, according to their legal situation. The major group are persons waiting for trial at the District Court of Baltimore City, the Supreme Bench of Baltimore City and Federal Courts. The other residents at the Jail are those, who have received a short sentence, not to exceed 18 months, but normally less than 30 days, and those who have been convicted and are awaiting sentence. Of the roughly twenty thousand people who pass through our Jail yearly, 75% are Black and almost 90% are males. The population at the Jail is relatively young, with about 7% being 17 years of age or younger and another 50% being 25 years of age or less. Jail residents, on the average, have completed 10 years of schooling; 25% have finished the 12th grade. You can correctly project that Jail residents and their families are in as great a need of City services as our general citizenry. Much has been done, but much more needs to be done.

The goals of the Jail correspond with those of other local lock-ups. They are:

- (1) Protection of society;
- (2) Custody and care of pre-trial suspects; and
- (3) Custody and care of sentenced offenders

Baltimore City wants to meet these goals. You can help us by providing a mechanism by which local governments will share with the States any Federal funds appropriated for prison/jail construction and determine the best possible use of such funds. Your actions will make a difficult job easier or impossible. It is suggested that whatever formula is developed, the following criteria be included:

- (1) Need for additional penal facilities;
- (2) Type of facility needs;
- (3) Population to be housed and length of stay; and
- (4) Facility design and program services.

**PREPARED STATEMENT OF WILLIAM D. LEEKE, COMMISSIONER,
SOUTH CAROLINA DEPARTMENT OF CORRECTIONS**

Mr. Chairman and members of the Subcommittee on Criminal Law, I welcome the opportunity to testify before you concerning the Criminal Justice Construction Reform Act (S-186). I regret that recent surgery prevented my attendance at the hearing. I am, therefore, submitting the following written comments for your consideration.

As a practitioner with some twenty years experience in the field, I am vitally concerned about the persisting problems facing correctional systems throughout the country. For the past twelve years I have been Commissioner of the South Carolina Department of Corrections. During this time, I have served as President of three professional associations: The Southern States Correctional Association, The Association of State Correctional Administrators, and The American Correctional Association. I have also served over the years on numerous commissions, committees, and task forces which were attempting to improve correctional systems and conditions for offenders.

While I believe my testimony reflects the concerns of many of my colleagues across the country, I am testifying as the Commissioner of the South Carolina Department of Corrections.

State correctional facilities in South Carolina currently have over 7,451 people squeezed into space designated to house only 5,148. Our largest institution is an antiquated bastille more than 120 years old where living space per person in many instances is only 35 square feet. Our newest maximum security institution which has been in operation seven years was designed to house 448 men but currently has 1,100 assigned there.

In August, we will open a modern reception facility in which individuals coming into the system who are not yet classified by age, offense or dangerousness will have to be double-celled in space designed for one due to overcrowding. We are using abandoned TB hospitals, military bases, and cast-off local facilities to house prisoners.

It is difficult to describe what working and living in cramped conditions day after day, year after year, does to staff and offenders. It is possible to observe the on-going

maintenance headache and expense of overcrowded physical plants taxed beyond their design specifications. Also, while difficult to measure, it is possible to feel the frustration and hostility that is evident when people are jammed into day rooms, visiting areas, and libraries and double and triple bunked in areas designed for work and activity space.

South Carolina is attempting to build new facilities but funds are limited; and at our current rate of growth, we would have to construct a new 500-man, multi-million-dollar facility every two and a half years just to keep pace. This says nothing of the need to replace antiquated, uneconomical, unsafe, existing facilities.

Overcrowding is compounded by limited state resources and decreasing federal assistance. The bottom line is that overcrowded, understaffed facilities are unsafe for not only inmates but for staff and the public at large.

Unfortunately, the situation I have described is not new nor is it an isolated case. The basic needs of corrections have been neglected for many years. Now, however, the courts are taking an increasing interest in conditions of confinement and have ruled that prisoners retain all constitutional rights except those which must be abridged to ensure the orderly operation of the prison system.

The federal government has passed statutes such as the Institutionalized Prison Act which places additional emphasis on the need for humane prisons. The U.S. Department of Justice has issued guidelines which, while voluntary on the part of states, are a measure of compliance with constitutional mandates. I believe it is important to note that the field of corrections also has developed, with financial assistance of the federal government, voluntary accreditation standards for correctional systems.

It is not that correctional administrators do not know what should be done to provide safe, secure institutions for the protection of the public--we simply do not have the resources to do what needs to be done.

There is also an increasing trend in South Carolina, as in other states, to require mandatory sentences for a variety of offenses. For example, one section of one of several pieces of

mandatory sentencing legislation currently being considered by the S.C. General Assembly would conservatively by 1998 increase the State's prison population by approximately 3,800 inmates at a cost in 1980 constant dollars of \$400 million.

States such as South Carolina faced with decreasing revenues and increasing demands for services simply do not have the resources to fund these kinds of expenses alone.

I am encouraged that you are considering passage of the Criminal Justice Construction Reform Act (S.186). It and other pending legislation demonstrates that the Congress recognizes the seriousness of the situation. It represents a positive step at a time when many in corrections feel they are being besieged from all sides. It demonstrates an understanding that prisons are a critical part of a democratic society's protection of its people. Federal leadership and assistance are needed now. Without them we are facing chaos and potential destruction in our prison systems.

Again, I appreciate this opportunity to share with you my concerns regarding the needs of correctional institutions and my position on this legislation. Your interest in public safety is commendable, and I urge you to help others understand the critical nature of this matter and take immediate action.

PREPARED STATEMENT OF JAMES WALTON, JR.
COMMISSIONER OF CORRECTIONS, STATE OF VERMONT

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

My name is A. James Walton, Jr., the Commissioner of Corrections for the State of Vermont. I am relatively new to this role, having served for the past three and a half years as the Deputy Mental Health Commissioner for the State and having assumed my current position exactly two weeks ago today. I would like to point out to the Committee that my experiences with the Health and Mental Health field, particularly with the institutional treatment aspects, have provided me with a perspective which I feel will prove extremely useful to me in my new role. Let me explain with a few examples.

POPULATION: The clients in both our mental institutions and our correctional institutions are similar, as they represent persons who do not conform with the norms and expectations of society.

CONFINEMENT: Both sets of clients, by and large, are confined against their will.

STAFF: In both situations, clients and staff are involved in close interrelationships and interactions.

PROGRAMS: In both situations, programming efforts are designed to change or correct behavior patterns.

In regard to the subject before us, S.186, I would like to point out that the State of Vermont has been most fortunate to have had strong support for prison construction from both our Governor and our Legislature over the past few years. In addition, Vermont has been in the forefront of community corrections in terms of philosophy, system design, and legislation.

In 1972 Vermont constructed a medium security facility in St. Albans and in 1975 began the process of systematic replacement of community correctional centers with the construction of a new center in Burlington.

In 1976, Vermont closed its maximum security institution at Windsor because of its poor conditions and physical plant. We became

the first state to do so, thus relying completely on a community corrections concept. Again in 1978 Vermont closed its central juvenile training school in Vergennes.

A correctional logging facility was constructed in 1979. In 1980 construction was completed on a new community correctional center at Rutland. Finally, another new community correctional center will be completed in 1982 in St. Johnsbury.

I feel that because of these experiences in construction, and because of progressive correctional initiatives in Vermont, that my testimony today is both appropriate and timely.

While I strongly endorse the intent and purposes of S.186 as badly needed assistance, I also offer caution and concern in two particular areas. Firstly, the bill in its present form has the potential to perpetuate 100 years of dismal failure by promoting construction of massive albeit modern human warehouses. Secondly, the bill attempts to control this by adding compliance language such as "advanced protection". While this is a laudable goal my concern is with the ambiguity which this term communicates as opposed to the specific language found in its American Correctional Association Standards and utilized in its accreditation process.

In Vermont we pride ourselves on our thrift, frugality and common sense. We have demonstrated this in our approach to correctional facility construction and our adoption of the American Correctional Association Standard Accreditation processes. In both instances I offer that this approach is a common sense alternative to the "advanced practices" wording of S.186 and will promote construction of modern facilities based on sound philosophy, principles, practices and standards.

Specifically, the bill should clearly establish fundamental guidelines governing construction of correctional facilities that will promote humane, effective and efficient correctional practices. At stake here is not the issue of brick and mortar, architectural design or better methods of incarceration. What is at stake is internalization vs externalization, massive centralized institutions vs community based institutions, brick and mortar strategies to change people vs programs to change people.

Large secure, centralized institutions are only part of the

answer. Even as I write this document riots are being squelched in Michigan. Attica and New Mexico are testimonials to the failures of large, overcrowded warehouses that become so internalized that human dignity is lost. Inmates, staff and systems themselves become slaves to the insatiable appetite of large institutions to such a degree that all fail to see the potential of the real world that exists beyond massive walls.

I submit that S.186 should be based on the realization that most inmates can and do return to the community. Therefore construction should be geared toward fostering an environment that is conducive to human growth and development.

Guidelines should be set in S.186 to do the following:

1. Utilize American Correctional Association standards governing the capacity and size of correctional facilities to be constructed.
2. Promote community based facilities.
3. Require linkages to community programs.
4. Encourage involvement of probation and parole in institutional programs.
5. Promote community participation and observation in correctional facilities and facility involvement in the community.

The second area of concern is the need to recognize the value of the American Correctional Association Standards as a clear substitute for the vague wording in S. 186, "advanced practices". The need for this is clearly evident in view of court decisions which have completely taken over entire correctional systems until such time as they have complied with prescribed standards.

In Vermont we have adopted the American Correctional Association Standards as a guide to "advanced practices". We are proud of the fact that on May 15, 1980 our Probation and Parole Division was the first in the Nation to be fully accredited. This has been part of a major plan since 1978 under a grant funded by LEAA. Under Phase II of this project two facilities are scheduled for audit by the Commission on Accreditation. As of this date, two facilities are scheduled for audit by the Commission on Accreditation for Corrections. Two more facilities are planned for audit in July. Action plans for the remaining two facilities (one a replacement facility) project their accreditation for 1982 and 1983 respectively.

As a result of this accreditation activity, there has been a great deal of knowledge gained, some of which I would like to share with you today.

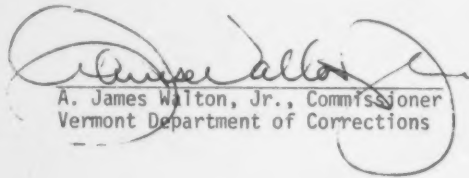
- The implementation of standards will help to improve the correctional system in a number of ways:
 1. By increasing the efficiency of correctional administration through the development of uniform policies and procedures;
 2. By increasing the safety of staff and inmates through the use of accepted and tested security practices;
 3. By improving the delivery of services to inmates through the provision of clearly stated goals;
 4. By providing for the collection of sound data to be used in planning for appropriate new facilities or restructuring of existing facilities.
- The implementation of standards can introduce uniformity to the system and can provide an opportunity to move beyond crisis management. By reducing the need to constantly focus on problems within the system an administrator is able to deal with the political and social realities that impinge on corrections, thus broadening his scope and his vision.
- Policies and procedures are planned, predetermined decisions. As such, they limit the need for continual discretionary decisions to be made, and provide a consistent basis for operations.
- The uniformity of policies and procedures can not help but ease the burden on the administrator and the correctional manager, and permit him to address pressing problems and become involved in long range planning.
- The correctional standards are a means of establishing a stable administrative base. They make it possible for a manager to establish an operation that is rational, one capable of being monitored; thus providing him with an opportunity for establishing quality control.

I propose that the American Correctional Association Standards are a workable guideline for "advanced practices" which has seen a

sizeable investment of LEAA tax dollars. We should benefit from this investment.

A related concern has to do with the managing or monitoring of the monies to be appropriated. It appears to me that monitoring for compliance with "advanced practices" would prove to be extremely difficult and terribly costly. In fact it would be duplication if not re-inventing the wheel. The investment has been made in American Correctional Association Standards, we should protect that investment and use them as the monitoring criteria.

Finally, on my own behalf, I wish to express my appreciation to the Committee for this opportunity to present this testimony.



A. James Walton, Jr., Commissioner
Vermont Department of Corrections

QUESTIONS AND ANSWERS

Questions for William G. Nagel
submitted by Senator Dole

1. YOU HAVE TESTIFIED IN OPPOSITION TO S.186 BECAUSE IT PROVIDES FUNDS FOR PRISON CONSTRUCTION. DOES YOUR OPPOSITION ALSO EXTEND TO THE PROVISIONS OF S.186 WHICH WOULD PROVIDE FEDERAL ASSISTANCE FOR OTHER CRIMINAL JUSTICE CONSTRUCTION NEEDS, SUCH AS COURTHOUSES, POLICE FACILITIES AND COMMUNITY-BASED FACILITIES SUCH AS HALFWAY HOUSES AND THE LIKE. WHAT ABOUT FEDERAL ASSISTANCE FOR JAIL CONSTRUCTION?
2. DESPITE YOUR OPPOSITION, ASSUME FOR A MOMENT THAT S.186 BECOMES LAW. SHOULD IT THEN CONTAIN A PROVISION WHICH WOULD MANDATE SINGLE CELL OCCUPANCY?
3. YOUR SURVEY OF AMERICAN CORRECTIONAL INSTITUTIONS REPRESENTED BY YOUR PUBLICATION, THE NEW RED BARN, WAS DONE IN CONJUNCTION WITH AN LEAA EFFORT IN 1970 WHICH LED TO THE ESTABLISHMENT OF A NATIONAL CLEARINGHOUSE ON CRIMINAL JUSTICE PLANNING AND ARCHITECTURE AT THE UNIVERSITY OF ILLINOIS. YOU WERE A MEMBER OF THE ADVISORY BOARD OF THAT GROUP FOR SEVERAL YEARS. S.186 WOULD REESTABLISH A CLEARINGHOUSE-TYPE FUNCTION TO PROVIDE TECHNICAL AND PLANNING ASSISTANCE TO THE STATES. IF FEDERAL FUNDS DO NOT BECOME AVAILABLE TO SUBSIDIZE STATE AND LOCAL CORRECTIONAL PROGRESS, WOULD IT STILL BE ADVISABLE TO ESTABLISH A CLEARINGHOUSE FUNCTION?
4. IN EARLY AUGUST I INTRODUCED S.1597, A COMPANION BILL TO S.186, THAT WOULD INSTITUTIONALIZE THE LEAA DISCRETIONARY GRANT PROGRAM, "FREE VENTURES" WHICH ATTEMPTS TO UPGRADE PRISON INDUSTRIES ACTIVITIES. IN YOUR EXPERIENCE, IS THIS EFFORT WORTHWHILE?

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December 21, 1981

Honorable Charles McC. Mathias, Jr.
U.S. Senate Committee on the Judiciary
Washington, D. C. 20510

Dear Senator Mathias:

Thank you for your letter of December 9 which has just reached me at our Florida office. I will answer the questions you have forwarded to me.

1. My opposition does extend to the provision of federal assistance for other criminal justice needs. This is a time when the federal government is reducing its contributions to the states for almost all human service activities. Some of these reductions are in areas that have historically carried deep federal commitments. I cannot, therefore, understand why the federal government should be contemplating now increasing its contribution to the states in an area where it has had no traditional involvement. Furthermore, it appalls me that there should be increased federal involvement in those areas of activity that are essentially repressive in nature while disregarding those areas designed to enable human growth.

2. Should, in an unhappy event, S186 become law, it should indeed contain a provision mandating single cell occupancy. My 11 years of working inside a prison convinces me that multiple occupancy is the single most destructive aspect of prison life.

Richard McGee is perhaps the most distinguished living penologist. After serving as senior prison official in New York City and as head of the Washington State Prison System. He was appointed, in 1944, as director of California's Department of Corrections. He served in that capacity throughout the administrations of Governors Warren, Brown and Reagan, and is currently Chairman of the Board of the American Justice Institute.

In his recent book, "Prisons and Politics," he begins the chapter on prison space as follows: "Joe Turner was serving a sentence in San Quentin for robbery and assault on a San Francisco taxi driver. He was above average in intelligence, white, a highschool dropout, and alcoholic.

"Turner was placed in the Old South cell block, which contained a thousand cells, stacked five tiers high. In the late 1940's, an effort had been made to mitigate the horrors of Old South by partitioning

OWNED AND MAINTAINED BY THE AMERICAN FOUNDATION

Honorable Charles McC. Mathias, Jr.

December 21, 1981

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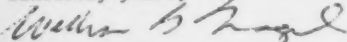
it into four sections of 250 cells each. However, the growth of California's prison populations following World War II was outdistancing the construction of new facilities at a frightening pace. Since San Quentin had always been overcrowded, lodging more than three-quarters of its population two men to a cell was nothing new.

"Turner was placed in a cell with another man, who was as anonymous in this huge package of humanity as Joe himself. One day, as the count was being taken before the 8 a.m. change of shift, Joe was found standing at the bars of his cell as the rules required, but his cellmate was lying dead on the floor. Joe did not deny that he had strangled his cellmate. In his own words, 'The bastard kept making passes at me. He wouldn't quit, so I killed him.'"

3. I preface the answer by repeating my opposition to the passage of S186. However, if it were passed, it would be disastrous to pass federal money to the states and counties for construction without standards and a signoff provision on the part of the federal government. My long experience in prison work tells me that, generally speaking, the citizens at the grassroots could care less about conditions of confinement of offenders and those being held pending trial. The only two factors which have played a significant role in the improvement of prison architecture have been (a) the activism of the courts and (b) the standard setting functions which were initiated by the National Clearinghouse back in 1970 or 1971. I believe, therefore, that a clearinghouse function similar to that established at the University of Illinois would be indispensable to the intelligent expenditure of federal money to the localities and states for jails and prisons.

4. I have read S1597 and would support it. Earlier in this letter I indicated the double celling as the single most destructive aspect of prison life. Running it a very close second is idleness. Prisons in America have massive idleness in the best of times. During these days of overcrowding the problems are magnified. I think the "free-venture" concept which was spawned by LEAA and cultivated by the American Institute of Criminal Justice is important to prison management and should be encouraged. I note that the concept has recently been endorsed by the Chief Justice of the U.S. in his speech at Lincoln, Nebraska.

Sincerely yours,



William G. Nagel

President

The American Foundation, Inc.

WGN/peb

cc: Senator Robert Dole



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February 9, 1982

The Honorable Charles McC. Mathias, Jr.
United States Senator
Committee on the Judiciary
Chairman, Subcommittee on Criminal Law
Washington, D.C. 20510

Dear Senator Mathias:

I am in receipt of your recent letter regarding hearings before the Criminal Law Subcommittee and various additional questions you have presented in that area. First, I would like to extend my sincere appreciation for the opportunity to appear before your committee, and as I am sure you are aware, this subject matter has been one of great concern to me for a number of years.

1. At the Subcommittee's initial hearing on S. 186 last spring, Hal Farrier, the Director of Adult Corrections in Iowa, recommended that the block grant program in the bill be implemented according to a formula with 50/50 matching contributions from the states. He thought this would provide a check on overbuilding and insure that the states channel federal money only to the most needed improvements and expansions. What would be your reaction to Mr. Farrier's suggestion?

I find Mr. Farrier's suggestion to be a good one, both with respect to substance and purpose. Clearly, the 50/50 matching contribution would work to alleviate the heavy financial burden which would be placed upon the states in the absence of federal funds. Additionally, I agree with Mr. Farrier that the concept of matching contributions would insure the thoughtful and resourceful use of federal funds.

The Honorable Charles McC. Mathias, Jr.
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2. I sometimes hear the claim that prison population has reached a saturation point at the present time due to the baby boom of the 1940's, and that inmate populations are bound to subside from here on. I think everyone recognizes the need to do something about the current conditions in our jails, but according to this saturation theory it might not be wise to undertake a major spending program that extends several years into the future, as S. 186 contemplates. What do you think about this reservation?

I do not agree that the inmate populations of the future are bound to subside, but rather, believe that the populations will at least maintain the existing levels. Additionally, the need for construction in the State of Kansas, as I am sure is true in other jurisdictions, results not only from increased prison population, but also due to the fact that the structures are extremely old and are deteriorating. In that respect, it would appear that prison construction is necessary in the State of Kansas regardless of whether the prison population rises or falls in the near future.

3. The Governor of California has advocated a 1/4 percent increase in the state sales tax for a ten year period in order to fund jail and prison renovation. In the absence of federal financial assistance, would you support a similar measure in Maryland [Kansas]?

I would support such a sales tax increase in the absence of federal financial assistance. In light of the ever-increasing burden on the citizens of Kansas, however, I must state that this would be the least attractive alternative for providing funds for prison construction.

4. In 1977, I introduced a bill in the Senate that would authorize the construction of 5 federal regional prisons, with bed space available to states and localities on a per diem basis. The Violent Crime Task Force suggested that the National Institute of Corrections conduct a study on the feasibility and merits of establishing regional prisons. How would you react to this as a federal response to the overcrowding problem in the states?

Although I would have no objection to any measure which would tend to reduce the overcrowding of existing state penal facilities, I foresee a number of difficulties that would be inherent in lodging state inmates in federal regional prisons. Obviously, dependent upon the location of the regional prisons, it would be necessary for a number

The Honorable Charles McC. Mathias, Jr.
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of prisoners to be housed in an area distant from their residence. This would not only present difficulties for family visitation, etc., it would also result in practical problems relating to the transportation of inmates, meetings with the state parole authority, and compliance with controlling state laws relating to parole, good-time credits, etc.

5. In testimony presented at the Subcommittee hearing on November 19, it was claimed that if S. 186 were enacted and the projected new prison construction were completed, there would then be a large additional price for the states to pay in maintaining the new facilities. One witness, Mr. Joyner from the American Civil Liberties Union, calculated that the additional costs nationwide would be \$4 million per year. Another witness, Mr. Nagel from the Prison Moratorium group, estimated that for every dollar spent on new prison construction, the taxpayers will have to pay \$16 for operating costs over the next three decades, for a total of \$104 billion, ignoring inflation. What is your assessment of the danger of this kind of cost spiral in connection with new prison construction?

In response to these witnesses' concerns, I would only emphasize that it is up to the states to recognize and meet the needs of state correctional systems. Although it is true that new facilities would perhaps result in increased operating costs in the future, it is also true that renovation of the existing, deteriorating structures will result in a considerable fiscal impact on the states. In my opinion it is up to the states to determine whether they wish to accept federal funds and thereby accept the potential increases in operating costs. I do not believe that this issue should be one to in any way affect the passage of the proposed federal legislation.

6. What sort of demands do prisoner lawsuits place on your office?

As with virtually every jurisdiction, prisoner lawsuits have placed an increasing demand on the staff of my office. Presently there are over 100 cases open in the various state and federal courts located in this jurisdiction, comprised basically of civil rights actions and habeas corpus actions. The vast majority of these lawsuits are presently being handled by one attorney, however, two other attorneys in the division devote approximately 25% of their time to such lawsuits as well.

The Honorable Charles McC. Mathias, Jr.
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February 9, 1982

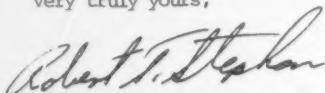
7. How do your experiences with these suits compare with other Attorneys General from your part of the country?

It is my impression from discussing these suits with other Attorneys General, that our situation is very similar to that of other jurisdictions. I believe it goes without saying that these lawsuits are increasing in number as well as complexity throughout the United States, and although a number of these suits ultimately result in dismissal or judgments for the defendants, they nevertheless consume a considerable amount of staff attorney manpower.

With respect to the Repeat Offenders Prosecution and Prison Improvement Act, I fully support the concept of directing resources to effectively prosecute repeat offenders in our criminal justice system. As your legislation indicates, the problem of the repeat offender is a unique and serious situation in our criminal justice system today. By directing specific funds and expertise to attempt to control this problem, there can be little doubt that it would result in an improved prosecutorial system.

I regret that I have been unable to complete the preparation of my responses prior to today, and would hope that these responses are of some assistance to you. If I can provide further information or be of assistance in any respect, please feel free to contact me.

Very truly yours,



Robert T. Stephan
Attorney General of Kansas

RTS:may

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The Honorable Charles McC. Mathias, Jr.
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Dear Senator Mathias:

It was my pleasure to testify before the Criminal Law Subcommittee at the November 19th hearing on the Criminal Justice Construction Reform Act and related bills. I am enclosing responses to the additional questions you submitted to me.

I also reviewed your 1977 Repeat Offenders Prosecution and Prison Improvement Act bill. Although the bill has merit, I believe that the Criminal Justice Construction Reform Act better addresses the more critical need of the states.

As you probably know, Maryland is working on the problem of the repeat offender. The Governor's Repeat Offenders Task Force has completed a comprehensive study of the problems of repeat offenders. The Task Force has recommended the implementation of Repeat Offender Councils, which would focus first on the large metropolitan areas of Maryland and would help coordinate the efforts of various law enforcement agencies to attack the problem of the repeat offender. The aim of the program is to improve the way repeat offenders are apprehended, prosecuted, convicted, incarcerated and treated. You may wish to contact Richard Friedman, Executive Director for the Commission of Law Enforcement and the Administration of Justice, under which the Task Force operated, for more information.

Thank you for informing me that you have spoken with Senators Leahy and Stafford concerning the anticipated amendment to the Regulatory Reform Bill, which will limit venue in the D. C. Federal District Court. I urge you to join them in their opposition to this amendment.

Please feel free to contact me if I can be of further assistance in these areas of mutual concern.

Sincerely,

Stephen H. Sachs

SHS:mpk

RESPONSES TO SUBMITTED QUESTIONS

1. At the Subcommittee's initial hearing on S. 186 last spring, Hal Farrier, the Director of Adult Corrections in Iowa, recommended that the block grant program in the bill be implemented according to a formula with 50/50 matching contributions from the states. He thought that this would provide a check on overbuilding and ensure that the states channel federal money only to the most needed improvements and expansions. What would be your reaction to Mr. Farrier's suggestion?

Mr. Farrier's suggestion is one with which I would not argue. I believe that experience has shown that individuals and states alike often are more judicious when spending their own money. However, the State of Maryland has demonstrated a commitment to addressing the problems created by ancient and overcrowded facilities by embarking on an aggressive program of construction and renovation. Other states have as well. Given this commitment and the pressing need for substantial funds beyond the means of nearly every state, there is little need to fear that states will either overbuild or spend the money unwisely.

Since a 50/50 block grant formula is certainly better than no federal money at all, I would support a bill with that formula. As I stated in my November 19th testimony, the states do not wish to abrogate their responsibility to provide an effective correctional system, but we do need help.

2. I sometimes hear the claim that prison population has reached a saturation point at the present time due to the baby boom of the 1940's, and that inmate populations are bound to subside from here on. I think that everyone recognizes the need to do something about the current conditions in our jails, but according to this saturation theory, it might not be wise to undertake a major spending program that extends several years into the future, as S.186 contemplates. What do you think about this reservation?

Although this is an understandable reservation, the current statistics do not seem to bear it out. Our State's Task Force on Prison Overcrowding has researched this issue using the expertise of an outside consulting firm and the Department of State Planning. The Task Force concluded that the State of Maryland would reach a peak in its population in 1987 with a total inmate population of 9,325. However, there were 9,520 inmates in our system on February 3, 1982. As you can see, our best projections of when we will reach our peak may be "soft". Our experts at the Department of Public Safety and Correctional Services do not believe that we will overbuild, especially in light of the fact that we have yet to meet the goal of having one inmate per cell.

Moreover, as you well know, the political climate is ripe for placing more and more persons in our prisons for longer and longer periods of time.

For these reasons, I believe that it would not be unwise to undertake a major spending program for the construction of correctional facilities that extends several years into the future.

3. The Governor of California has advocated a 1/4 per cent increase in the state's sales tax for a 10 year period in order to fund jail and prison renovation. In the absence of federal financial assistance, would you support a similar measure in Maryland?

There has been longstanding opposition to earmarking sales tax receipts for any special purpose in the State of Maryland. I concur with this position. Furthermore, if such legislation had been enacted during the last fiscal year, less than \$2 million would have been collected. This amount is clearly inadequate. An estimated \$80 million is needed to finance current prison construction plans in our state system. In addition, it is estimated that it would cost nearly \$50 million of state and local money to finance all the needed local jails.

4. In 1977, I introduced a bill in the Senate that would authorize the construction of five federal regional prisons, with bed space available to states and localities on a per diem basis. The Violent Crime Task Force suggested that the National Institute of Corrections conduct a study on the feasibility and merits of establishing regional prisons. How would you react to this as a federal response to the overcrowding problems in the states?

I believe that studying the feasibility and merits of establishing regional prisons is well worth the effort. However, I feel that the passage of S. 186 is a more meaningful and useful federal response to the overcrowding problem in the states. The State of Maryland has taken and will continue to take advantage of available federal prison space where appropriate.

5. In testimony presented at the Subcommittee hearing on November 19th, it was claimed that if S. 186 were enacted and the projected new prison construction were completed, there would then be large additional price for the states to pay for maintaining the new facilities. One witness, Mr. Joyner from the American Civil Liberties Unit, calculated that the additional cost nationwide would be \$4 million per year. Another witness, Mr. Nagel from the Prison Moratorium group, estimated that for every dollar spent on new prison construction, the taxpayers will have to pay \$16.00 per cell in operating cost over the next three decades for a total of \$104 billion, ignoring inflation. What is your assessment of the danger of this kind of cost spiral in connection with new prison construction?

Officials at the Department of Public Safety and Correctional Services agree that there is a large expense associated with maintaining and staffing new prison facilities. However, the bottom line is -- we need beds now and for the foreseeable future. Our officials pledge that if federal monies are accepted, we would adequately staff and maintain the constructed facilities.



U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

MAR 10 1982

Honorable Charles McC. Mathias, Jr.
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Senator Mathias:

This is in response to your request for additional information for the record following the November 19, 1981, Criminal Law Subcommittee hearing, Financial Assistance for Criminal Justice Construction Programs. Following are responses to specific questions posed by Senator Dole and yourself.

In addition to the series of questions and answers, we would like to advise you regarding your general questions in the cover letter. As of December 11, 1981, the clearinghouse created within the Bureau of Prisons to facilitate the Federal surplus property program, had 114 contacts concerning the program. Of these, 52 inquiries were made by States, 21 by counties, and 18 by Federal agencies. A detailed report on the progress to date is enclosed as Attachment A. Please note that in addition to the surplus Federal (land) property, the Department is now finalizing an excess Federal property program for jails, to be administered by the U.S. Marshals Service. This program will enable the Service to acquire excess Federal and military equipment and supplies for placement in local jails that house Federal prisoners.

With regard to the recommendation of the Attorney General's Task Force on Violent Crime for a study of the merits and feasibility of establishing Federal regional prisons, the National Institute of Corrections is in the process of organizing its resources to conduct such a study over the recommended four-year period.

Following are the questions posed in your letter of December 4, 1981, and the Department's responses:

- Q. Administration spokesmen and the Attorney General's Task Force on Violent Crime have emphasized the critical importance of improved corrections facilities and procedures at the State and local levels. The Task Force, however, specifically recommended Federal financial assistance of \$2 billion for State corrections facilities alone. Why has the Administration refused to endorse or comment on this Task Force recommendation?
- A. As the Department indicated in its testimony on S. 186, responsibility for, and control over, construction of State and local law enforcement facilities most properly resides in the State and local governments. The role of the Federal

government should be to encourage and assist the State and local governments in upgrading correctional facilities through advisory standards, training, and technical assistance services. Reductions in Federal spending are the cornerstone of the Administration's plan for economic recovery. This and other Task Force recommendations that addressed the improvement of State correctional facilities were considered during the formulation of the Department's FY 1983 budget request. In light of the overriding priority for fiscal austerity, we do not concur in the \$2 billion expenditure recommended by the Task Force.

- Q. S. 186 contemplates the establishment of a new agency within the Justice Department, the Criminal Justice Facilities Administration, to administer the program authorized by the bill. In its August 4 letter, the Justice Department opposed S. 186 in part on the grounds that there were existing agencies within the Justice Department that could administer the program. Yet at this date, it seems that LEAA is rapidly being shut down. If LEAA ceases to exist, what other agency of the Department could administer a multi-billion dollar aid program?
- A. Under existing legislation, administration of the S. 186 program would be within the missions of both the Office of Justice Assistance, Research, and Statistics and the National Institute of Corrections, but as you know, we do not support this legislation.
- Q. One of the principal criticisms of S. 186 is that its benefits would be limited to "bricks and mortar" assistance with no money to be made available for program development, training, funding of alternatives to incarceration and so on. The Part E program of LEAA, which was in existence from 1970 to 1979, provided substantial Federal funding -- well over \$2 billion -- for these latter purposes. What is the Department's view of the establishment of a program similar to Part E? From 1970 to 1979 LEAA administered a Part E Program which provided almost \$2 billion to State and local correctional authorities. One of the principal thrusts of that program was to assist the States in devising alternatives to incarceration. The Carter Administration abolished that program. You criticize S. 186 for not requiring the States to devise alternatives to incarceration. Does it then follow that you would support reinstatement of the Part E Program?
- A. Between 1970 and 1979, LEAA was appropriated approximately \$900 million (rather than \$2 billion) for Part E programs. These funds were used by State and local governments for all types of corrections-related activities including construction, renovation, prison industries development, training of corrections personnel, and alternatives to incarceration. The Department has consistently recognized the interrelationships of these activities in the corrections setting. Thus, while the Department finds objectionable the exclusive focus of S. 186 on "bricks and mortar," it should not be viewed in a context separate from the overriding concern regarding the total cost of the proposal to the Federal government. Moreover, the observations contained in our testimony before the Subcommittee noted that S. 186 does not require "the states to devise alternatives to incarceration." (Emphasis added.) While the Department is sympathetic to the goals of S. 186 and recognizes the importance of training and alternatives to incarceration, the substantial expenditures that would be required by S. 186 and a "program similar to Part E" cannot be justified in terms of current budgetary goals and objectives.

- Q. Do you see any value in the establishment of a technical assistance capability such as the LEAA-funded National Clearinghouse on Criminal Justice Planning and Architecture at the University of Illinois?
- A. During its nine years of operation, the National Clearinghouse on Criminal Justice Planning and Architecture was an integrating and authoritative force in bringing together the technical, academic, practitioner, and political interests involved in correctional planning and program operation. The Clearinghouse developed a body of knowledge and exemplary approaches to correctional facility design and programs that established standards for the field.

While we recognize State and local need for a technical resource that can offer expert, uniform, state-of-the-art guidance in the planning and design of correctional facilities, and believe it appropriate for the Federal government to provide financial and technical support, we would recommend against reestablishment of a national clearinghouse for this purpose. The National Institute of Corrections (NIC) has in place a technical assistance mechanism that can and does -- when warranted and resources permit -- provide such assistance to the States and localities. The NIC was the prime recipient of materials developed by the National Clearinghouse on Criminal Justice Planning and Architecture when it disbanded and has been providing assistance to the field in this area through training, clearinghouse services, and technical assistance. A need does exist to provide for on-going modification of standards and policies developed by the Clearinghouse to ensure technological and practical integrity.

- Q. The Administration has attempted to respond to the desperate problem of overcrowding in State prisons and jails by identifying surplus Federal property -- mostly unused military facilities -- which might be converted to use as corrections facilities. Does the Administration regard this as anything more than a temporary, stopgap approach to the problem? How do you propose to address the inherent problems related to the remote location of many of the available Federal properties and the absence of trained corrections personnel in the areas where these facilities are situated?
- A. Whether the use of Federal surplus property is a temporary or permanent solution to prison overcrowding will depend largely on the needs of each particular jurisdiction and the nature and availability of surplus property in that area. While the transfer of surplus property is intended only as a form of short-term relief, we believe that it will provide a permanent solution to prison overcrowding for some jurisdictions.

The location of the property and availability of a qualified labor pool must be considered by each State or locality when they select from the available surplus properties. The Federal Government continues to provide training for State and local corrections personnel through the National Institute of Corrections, as was recommended by the Attorney General's Task Force on Violent Crime.

We must reiterate that State and local governments bear primary responsibility for criminal justice activities, including the construction and modernization of correctional facilities. The States and localities must participate fully in the identification and implementation of long-term solutions to jail and prison overcrowding.

- Q. Do you have an estimate of the total number of beds that might be available through the Department's program of donation of surplus military facilities?
- A. We cannot estimate the bed-space that could be made available by conversion of surplus military facilities to correctional use without a costly survey and analysis of the 500 sites identified by GSA as available. These sites range from unimproved land to improved installations with adequate sewage and utilities and encompass former military facilities as well as surplus properties of varied Federal agencies. While not all surplus sites are suitable for correctional use, the roster of available properties is continually being updated and expanded by GSA, and these rosters are being made available by the Federal Bureau of Prisons to interested States and localities. In assuming the surplus property for correctional purposes, State or local governments would develop the properties as they deemed appropriate. We are confident that the program will have a positive impact in helping to alleviate prison and jail overcrowding.
- Q. The National Institute of Justice, pursuant to a mandate from the Congress, conducted a four-year survey of State and local correctional facilities and programs. Would you supply for the record a summary of this study and provide us with your comments on it?
- A. In response to the mandate contained in the Crime Control Act of 1976 (P.L. 94-503), the National Institute of Justice formulated a two-phased research program. The first phase entailed the collection of all available data from Federal agencies, a survey of all State departments of corrections, and the design and development of projection techniques to address the future needs aspect of the mandate. In addition, case studies of four States were prepared in order to assess the effects of various policy and legal factors on confinement practices.

The final report, entitled Prison Population and Policy Choices, was completed and submitted to the Congress on September 30, 1977. Since that time, the two-volume study has been reprinted three times by the Government Printing Office due to high demand.

Prison Population and Policy Choices essentially reported the following findings:

1. The 38.8 percent rise in the prison population between 1972 and 1977 could best be attributed to shifts in policies regarding prison intake, rather than policies relating to either length of stay or release. As a result, simulation models were developed representing different policy assumptions and scenarios, and prison population projections through 1982 were developed for each State and the Federal system.
2. In comparing the rated capacities of prisons with the counted prison population of June 30, 1977, a nationwide deficit of 20,665 bed-spaces was observed. This deficit was most pronounced in the South, where there were nearly 11,000 more prisoners than bed-spaces.
3. State and Federal correctional systems reported plans to increase capacity by 62,194 between June 30, 1977 and December 31, 1982. Five States (Florida, Louisiana, Michigan, South Carolina, and Texas) accounted for almost half of the planned net increase.

4. The four case studies revealed little evidence that any jurisdiction had an explicit prison population policy. Prison populations varied greatly, regardless of jurisdiction, crime levels, or demographic characteristics.

The Phase II effort was initiated immediately after the completion of Phase I. This part of the research was planned to include a more precise assessment of institutional conditions, for both local jails and halfway houses as well as for State and Federal prisons. In addition, continued effort was made to improve population projection methods, and five additional case studies of sentencing reforms were to be conducted (determinate sentencing in California and Indiana, parole guidelines in Oregon, the Community Corrections Act in Minnesota, and the mandatory minimum sentence for gun use in Florida).

This research resulted in a five-volume study entitled American Prisons and Jails, completed in January 1981.

Enclosed for the full information of the Subcommittee is a copy of American Prisons and Jails, Volume I: Summary and Policy Implications of a National Survey. (See Attachment B).*

- Q. The Bureau of Justice Statistics publishes annual reports on prison inmate population. Could you supply for the record what this data reveals as to current inmate population trends in Federal, State, and local jurisdictions? Is it fair to say that there have been rather substantial increases in population trends in recent months?
- A. Surveys and statistical analyses published by the Bureau of Justice Statistics show that the number of persons in State and Federal prisons rose by 66 percent between 1969 and 1980, to an all-time high of 328,695. The most recent data also show that, in addition to the prison population, 160,000 adults were in jail and 43,000 juveniles were in detention in 1980. Moreover, during the first half of 1981, the prison population of the United States swelled by more than 20,000. That six-month increase exceeded the population growth of the entire preceding year.

Attached for the full information of the Subcommittee is a copy of the Bureau of Justice Statistics Bulletin entitled "Prisoners at Midyear 1981." (See Attachment C).

- Q. If S. 1630 becomes law in the form as reported from the Senate Judiciary Committee yesterday with its provisions abolishing parole and establishing a concept of determinate sentencing philosophies, would there be a significant impact on Federal prison inmate population?
- A. S. 1630 will not have a substantial impact on the size of the Federal prison inmate population. The bill does not simply abolish parole and replace it with determinate sentences in the context of current law. Instead, it completely revises the Federal sentencing system, with numerous safeguards to assure that no part of the corrections system will be overburdened.

Under S. 1630, a Sentencing Commission is created in the judicial branch that is charged with developing guidelines for use by sentencing judges in determining the appropriate sentence in each Federal criminal case. The guidelines will recommend an appropriate sentence for each combination

*Retained in subcommittee files.

of offense and offender characteristics. The Sentencing Commission is directed in proposed 28 U.S.C. 994(g), in developing the guidelines, to take into account, "the nature and capacity of the penal, correctional, and other facilities and services available in order not only to assure that the most appropriate facilities and services are utilized to fulfill the applicable purposes (of sentencing) but also to assure that the available capacities of such facilities and services will not be exceeded." In addition, the Commission is directed, in formulating the initial set of guidelines, to "be guided by" current sentencing practices and, in particular, to take into account the actual time served by convicted defendants sentenced to terms of imprisonment, rather than the terms imposed under current law (which may be several times higher because of the parole release system).

The sentencing judge would be required to impose sentence in accordance with the applicable guideline unless he found that a particular aggravating or mitigating circumstance that should affect the sentence was not adequately considered in formulating the guidelines. In that event, he could impose sentence outside the guidelines, stating reasons for doing so, and the sentence would be subject to appeal on the issue of reasonableness. It is expected that 80 to 85 percent of sentences will be imposed within the guidelines and that the appellate review process will assure the reasonableness of those sentences that are outside the guidelines.

Q. It is my understanding that in a number of jurisdictions the U.S. Marshals Service is having increasing difficulties in finding available space to detain Federal prisoners. This is especially true in those jurisdictions under Federal court order. Could you provide the Committee with a status report on this situation and tell us of any plans to provide assistance to local authorities?

A. The Marshals Service has lost the use of over 150 jails since 1979 as a result of court- or state-directed population ceilings, and anticipates that this trend will escalate as rapidly increasing State and local prisoner loads exceed jail capacities.

To the extent possible, Federal prisoners, held by the Marshals for Federal court actions, are being transferred to Bureau of Prisons facilities. Time and distance to court, as well as the physical plant and staffing capabilities of the Federal institutions, will limit the further transfer of court-held prisoners. The Federal criminal justice system's capability to arrest and bring Federal offenders to trial is being influenced by the nonavailability of local or Federal detention space.

One project assisting local authorities and offering limited benefits to the Marshals Service was recently developed by the National Sheriff's Association under a small grant (\$45,458) from the LEAA. Under the program, 45 sheriffs have indicated their willingness to accept prisoners from Federal, State, or local law enforcement agencies. These 45 facilities are located in 25 States. Since the program began operation on November 1, 1981, the NSA has received 18 requests from local officials in need of jail space.

The Marshals Service projected that its caseload will increase by 2,500 prisoners during 1982 as a result of Border Patrol, FBI, and DEA apprehension activities. The Department has recognized the seriousness of the problem and has proposed a plan of action that would provide space for Federal prisoners while also assisting local authorities.

The basic component of the plan, which was recommended by the Task Force on Violent Crime, calls for the establishment of an Intergovernmental Cooperative Agreement Program (CAP) administered by the Marshals Service. CAP will help the Service to acquire detention services through renovation and expansion programs. CAP funds would also be available to acquire equipment and supplies required by jails to meet minimum detention standards.

The Department is currently finalizing an Excess Federal Property Program that will allow the Marshals Service to furnish jails with excess Federal and military equipment and supplies that would benefit Federal as well as local prisoners and minimize the requirement to furnish new items under CAP.

Both the property and cooperative agreement programs would be based upon the Marshals Service's existing jail inspection program that identifies the sub-standard conditions of each Federally-used facility and calls upon the technical assistance capabilities of the National Institute of Corrections, and several national associations (i.e., NSA, AMA, ACA) for support and advice. This plan has the potential for resolving Federal space problems within a few years if financially supported, and could directly benefit over 700 jails which house an estimated 80 percent of all detained prisoners in the nation.

- Q. Would you provide the subcommittee with information regarding the LEAA-sponsored "Free Ventures" grant program? It is my understanding that this program has been quite well received in those States which have implemented it. This experience was the basis for the introduction of S. 1597.

In view of the modest funding authorization of S. 1597 and the reasonable expectation that the corporation established under the provisions of the bill could become self-supporting, please tell us the basis for OMB's objections to the bill.

- A. The enclosed LEAA Program Brief provides a comprehensive summary of the Free Venture Discretionary Grant Program. (See Attachment D). The program has been well received in those States that participated and, to a greater or lesser degree, those States continue to administer their prison industries in accordance with the Free Venture concepts. Each State has, individually, acknowledged that prison industry programs can be economically self-sufficient while providing prisoners with an employment experience that aids them in achieving successful reintegration into society. Further information on the Free Venture program follows in response to questions posed.

The Department stated its opposition to S. 1597 in considerable detail when we testified before the Criminal Law Subcommittee of the Senate Judiciary Committee on November 19, 1981. In brief, in our view, the State governments have the primary responsibility for encouraging prison industries in State prisons. Thus, even a modest expenditure must be closely scrutinized, especially at a time of fiscal austerity. Moreover, the benefits predicted to result from the establishment of the corporation called for in S. 1597 are speculative at best. Finally, the Federal government is already able to assist prison industries through the National Institute of Corrections. A more intrusive role is not necessary at this time in view of the paramount need for fiscal restraint.

- Q. What will happen to the existing seven Free Venture projects certified by LEAA when LEAA goes out of business?
- A. Projects certified by authority of Section 827 of the Justice Systems Improvement Act (JSIA) will remain certified unless the Department becomes aware of unacceptable conditions and cancels certification for cause.
- Q. Kansas is one of the States certified under the Free Venture program. One project site is currently operating and Kansas has requested certification of three more sites. What provision is the Department making to continue to work with the States to certify additional sites?
- A. Depending on the availability of personnel and funds, the Department, through LEAA, will continue to work with the States to certify the remaining of the seven projects authorized for certification. In the event that less than seven projects are certified by LEAA at the termination of the JSIA authority, the remaining projects, if any, cannot be certified.
- Q. What provision is the Department of Justice making to monitor the projects to assure: payment of prevailing wages; payment of taxes; payment of room and board; payment of family support; and payment of restitution to victims?
- A. Since LEAA is being dissolved on April 15, 1982, no decision has been made regarding continued responsibility for specific monitoring of these projects.
- Q. Based on the experience thus far in the Free Venture program, how much has been generated in the payment of Federal and State taxes?
- Using this prior experience as a guide, how much money in Federal taxes is likely to be generated by the proposed expenditures of \$750,000 per year?
- A. The following figures were obtained from Kansas' certified project involving 42 inmates employed from August 1980 through November 1981.

Total Salaries Earned	\$354,000
Federal Tax Paid	63,000
State Tax Paid	8,000

Even though positive results were obtained in one isolated experiment, we hesitate to predict how much tax revenue could be generated from the other similar projects. Data from these other experimental projects has not been collated, and due to the uncertain state of the economy, it would be extremely difficult to predict the extent of success or failure of each project.

- Q. How many inmates who are employed in Free Venture programs are paying Federal and State income taxes; family support payments; restitution; room and board?
- A. In the certified Kansas project, 42 inmates have paid \$74,000 for room and board and \$1,700 for family support. In the Minnesota certified project, approximately 40 inmate employees are paying \$30.00 per week for family support which is collected by the State Welfare agency. No centralized data is available at this time that accurately describes payment of restitution. Due to the newness and innovative nature of the program and the fact that heretofore inmate earnings

were not sufficient to provide restitution payments, the administrative ability of the States to determine and collect restitution is not yet fully developed.

Q. Are there any indications that the State governments recognize these prison industry programs as a means of recouping some of the costs of maintaining correctional institutions?

A. Yes, through the receipt of room and board charges averaging \$5.00 per day, seven days per week, and from payments received from private industry employers in excess of overhead (including inmate salaries). These funds are used directly, to reduce the costs of maintaining correctional institutions, or indirectly, through deposit in the State general fund.

Q. What are some of the kinds of jobs that inmates are working at in the Free Venture projects?

A. Within two certified States inmates are employed as:

Braker press operators	Maintenance workers
Punch press operators	Electronic assemblers
Shear operators	Mechanical assemblers
Welders	Warehousemen
Machinists	Materials handlers
Shipping clerks	

Within the Free Venture Prison Industries discretionary grant program, a representative sample of jobs includes:

Furniture upholsterers	Automotive mechanics
Eyeglass lens grinders	Machinists
Offset press operators	Furniture sanders
Mattress stuffers	Furniture strippers
Automatic data entry clerks	Graphics art technicians
Furniture finishers	Saw mill operators

Q. Why should private industry be interested in prison industry programs?

A. Feedback from private industry management indicates interest is based upon tax incentives, the availability of a stable labor force, reduced overhead costs, and a strong sense of social involvement.

Q. What has been the typical reaction of labor unions to Free Venture?

A. The reactions of representatives of the AFL/CIO, Teamsters and United Food and Commercial Workers range from resistance to the development of a proposed project to general acceptance. Three major issues have been the focus of attention: involvement of organized labor in planning, impact of projects upon unemployed union members, and the ability of unions to organize inmates employed by private industry.

Q. What is the potential for the expansion of prison industry programs?

A. It would be highly speculative at this early stage of prison industries development to attempt to estimate its potential for expansion. While the early indications are highly encouraging, the initial projects require more time to become established and additional demonstration sites should be developed in order that the merits or shortcomings of this program can be fully identified. Assuming that positive results continue to flow from the current prison industries

effort, however, it could be argued that the potential for expansion exists, with appropriate modifications, in virtually all States and correctional institutions.

- Q. What percent of the National Institute of Corrections (NIC) budget was specifically directed toward State and local prison industries development in FY 1981? What percent of the FY 82 budget is earmarked for State/local prison industries? What percentage of the FY 1983 NIC budget is planned for prison industries?
- A. The Law Enforcement Assistance Administration (LEAA) had played a leadership role in the development of State prison industries. The National Institute of Corrections (NIC) has supplemented the LEAA initiatives by providing training for managers of prison industries and technical assistance. During fiscal year 1981, \$75,000 was allocated by the National Institute of Corrections to the training of managers of State and local prison industries programs. This group was identified by the field as being in need of substantial training, and curriculum was specifically designed to improve the operation of prison industries through improved management. The fiscal 1981 funds provided two five-day training programs for a total of 60 State and local managers of prison industries. The training emphasized management techniques, and examined national standards relevant to prison industries, and encouraged the development of strategies to effect economic self-sufficiency and provide cost-effective training for inmate employees.

In fiscal 1982, NIC funds were allocated specifically to the providing of technical assistance via small grants to State agencies and via direct, on-site assistance to help improve the industrial operations. Most requests for assistance in the area of prison industries involve providing professional assessment of the existing industry programs and making recommendations for improvement that can then be presented in requests to State legislatures. It is estimated that approximately \$100,000 will be expended in this effort. In addition, administrators of prison industry programs are being encouraged to participate in regular NIC management training programs.

During fiscal 1983, the National Institute of Corrections anticipates expending \$75,000 in the area of prison industries. These funds will allow the development and compilation of model legislation and policies for prison industries for use and adaptation by the States and localities. Specifically, the project will produce:

1. Model enabling legislation for prison industries, as well as model legislation regarding prison industries' acquisition of quality raw materials at competitive prices and regarding marketing.
2. Comprehensive model policies and procedures for all aspects of prison industries operation, including but not limited to general administrative procedures, budgeting and accounting, selection and training of inmate employees, and industrial safety.
3. Current information on legal considerations affecting prison industries, professional standards, and existing prison industries activities in the States.

In Fiscal Year 1983 continued training and technical assistance will be provided to State prison industries staff.

The Office of Management and Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,


Robert A. McConnell
Assistant Attorney General
Office of Legislative Affairs

Enclosures.

Attachment A

BUREAU OF PRISONS CLEARINGHOUSE ACTIVITIES

In August 1981, the Bureau of Prisons Office of Program Development began functioning as a clearinghouse for state and local governments interested in obtaining surplus military and federal properties for use as correctional and detention facilities.

To facilitate operation of the clearinghouse, through the offices of the Attorney General, contacts were established with the General Services Administration, the Department of Defense, and the Department of Interior. Respectively they are:

Mr. James H. Pitts
Director of Special Programs

Mr. Robert Sontе
Deputy Assistant Secretary of Defense

Mr. R. W. Pasecki
Director, Office of Acquisition and
Property Management

Clearinghouse staff have maintained close contacts with the liaisons each of who have been helpful in providing the information required by clearinghouse staff to answer inquiries.

To publicize the operation of the clearinghouse, letters were transmitted to the Governor of each state by the Associate Attorney General. Also, letters were transmitted to the Directors of State Departments of Corrections, American Correctional Association, National Sheriffs Association, National Association of Counties, and the National league of Cities by the Director of the Bureau of Prisons.

As of December 11, 1981 we had 114 contacts concerning the clearinghouse operations. Of these, 52 were state inquiries; 21 county; 18 federal; and 23, other.

While over half of the inquiries have been primarily for property listings, nearly one-third have been for specific information on such questions as to whether certain

properties are available or procedural questions on how to apply for properties. Some inquiries have been merely of a pro forma nature.

To assist the states and localities in their efforts, we have maintained personal contact with each of the General Services Administration's ten regional property directors. We have also advised numerous individuals personally on procedures for applying for surplus property, and where there has been expressed interest we have offered our assistance and guidance.

The following are a list of Federal properties currently used as correctional facilities, and a list of properties where attempts are being made to acquire the sites as correctional facilities.

Chillicothe Federal Reformatory, Ohio

The State of Ohio is currently leasing this former Federal Reformatory and using it as a correctional facility. The State is negotiating a purchase with the General Services Administration.

McNeil Island Federal Penitentiary, Washington

The State of Washington is currently leasing this former Federal Penitentiary and using it as a correctional facility. The State is negotiating a long-term lease with the General Services Administration.

Charleston Air Force Station, Maine

This site was turned over to the Maine Department of Corrections on September 11, 1981. There was no involvement by the clearinghouse as this action preceded its establishment. The Bureau of Prisons, however, did support Maine's application.

Watertown Air Force Station, New York

This site was turned over to the State of New York on September 28, 1981 for use as a minimum security facility. New York expects to move its first prisoner into the facility in February.

Lockport Air Force Station, New York

The State of New York is attempting to acquire this site for use as a correctional facility. GSA decision still pending. On 12/9/81 GSA requested Department of Justice extension of consideration period. Department of Justice (Fred Friedman) opposed further extension. GSA is deciding whether to extend the decision timeframe. It appears that, if the extension is made, it will improve the chances of competing

interests (a home for the aged) over the New York Department of Correctional Services.

Lakeside Air Force Station, Montana

The State of Montana withdrew its application due to community opposition. As of this date they have no expressed interest in other properties.

Air Navigation Facility, Jackson, Mississippi

The Mississippi Department of Corrections has filed a letter of interest with the Department of Education and is expected to pursue acquisition of the property. The application faces several competitors and a decision is pending.

Almaden Air Force Station, California

The General Services Administration and Santa Clara County are negotiating a lease; General Services reduced the lease payment from about \$15,000 per month to \$7,500, but the County cannot afford that. Still negotiating. National GSA is now involved and this could be resolved within a short period.

Marine Supply Depot, Philadelphia, Pennsylvania

The City of Philadelphia at one time expressed an interest in this site for a work release or minimum security facility. We contacted the General Services Administration on their behalf and referred them to the appropriate General Services Administration official. However, they have not formally applied.

Fort Dix Military Stockade, New Jersey

The State of New Jersey has sought use of this facility for correctional use. The Department of the Army indicates a possibility of lease agreement signing within a month.

Norco, California

The California Department of Corrections (DOC) has expressed interest in this property. We advised California of application procedures and we contacted the General Services Administration on their behalf. California is also looking at several other sites without formal application as yet. The Norco property is adjacent to an existing California institution, but the property is still excess. GSA regional personnel indicate that the DOC has formally expressed an interest and will be considered once it becomes surplus. This should be in the near future.

Fort Lewis and McChord Air Force Base Detention Facility, Washington

The State of Washington has expressed an interest in these facilities and we have contacted the Department of Defense in their behalf and referred them to the Department of Defense contact, Bob Stone. DOD has had no contacts with the State on McChord and informed Washington that Fort Lewis was not available.

Public Health Service Facility, Bessemer, Alabama

The State of Alabama has expressed an interest in this site as a possible work release center. They intend to pursue acquisition with GSA, but the property is still excess. The decision whether it becomes surplus should be made by regional GSA by February 1982.

Hawk Missile Site, Florida City, Florida

The Florida Department of Corrections (DOC) through the Department of Education has applied to GSA for this site for inmate and staff training only. There is a competing application for park and recreation use, however, GSA officials indicated that the DOC application was superior and they expect a decision on this property next week (12/14/81).

Nellis Air Force Base, Las Vegas, Nevada

The Air Force Base is providing local jail officials with Air Force dormitories, which will be removed from the Air Force Base to a local site for jail use. Advised of this situation by civil rights division.

Addison Nike Site, Chicago, Illinois

The Illinois Department of Corrections has applied for this site in suburban Chicago for work release program. Regional GSA is considering their application along with several competitors. GSA hopes to resolve the competing interests in the near future.

National Guard Facility, Amarillo, Texas

Sheriff's office has expressed an interest in this site for training purposes. Property is excess, but will be announced as surplus to all public bodies on 12/17/81. Clearinghouse staff will inform the Sheriff.

Armed Forces Reserve Training Center, Midland, Texas

A county judge expressed an interest in the property, but on 12/10/81 GSA announced it will be transferred to the City of Midland for an airport.



Bureau of Justice Statistics Bulletin

Prisoners at Midyear 1981

September 1981

The prison population of the United States swelled by more than 20,000 during the first half of 1981 adding more persons to the rolls of the Nation's correctional institutions in 6 months than were added during the previous 12 months. On June 30, 1981, State and Federal correctional institutions held nearly 350,000 prisoners, compared with less than 330,000 yearend 1980 and 300,000 yearend 1977. The 6.2 percent increase during the first half of 1981 was equivalent to an annual growth rate of nearly 13 percent compared with increases of 4.5 percent in 1980 and just above 2 percent in 1979 and 1978. If this trend continues until yearend, prison population growth in 1981 will surpass the record set in 1975.

The number of Federal prisoners rose by 1,370 in the first half of 1981, reversing a trend that has cut the Federal prison population by one-fourth over

This issue of the Bulletin inaugurates the publication of midyear statistics on the Nation's prisoner population. These statistics, like the comparable annual data, are available only because of the high level of support and cooperation provided to the Bureau by State correctional officials throughout the country.

We have asked them to bear the extra burden of supplying population data each quarter because of the need to follow closely the mounting pressures on the Nation's correctional systems. To minimize the

additional reporting burden placed on the States, we have not sought to collect each quarter the full range of detailed statistics reported by the States at yearend.

These data are collected by the U.S. Census Bureau from the departments of corrections in the 50 States and the District of Columbia through the Bureau of Justice Statistics' National Prisoner Statistics program.

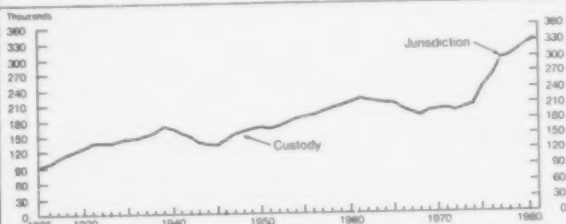
Benjamin H. Renshaw III
Acting Director

the previous three years. Federal authorities attributed this change to more aggressive law enforcement at the Federal level and to a more conservative Federal parole policy.

The overwhelming part of the total increase, nearly 19,000, occurred in State institutions. To cope with expanding populations, State correctional authorities employed a wide range of measures including tents, prefabricated buildings, double bunking, and early release. Facilities in some States housed almost twice their rated capacities and other States were relying heavily on space in local jails.¹ These increases were felt in almost every State. Only five States, most in the West, reported population decreases during the first half of 1981.

The largest correctional system in the United States, the Texas system, surpassed 30,000 during the first half of the year, adding over 1,000 inmates. Compared with many other States the rate of increase (less than 4 percent)

Number of sentenced State and Federal prisoners, yearend 1925 - midyear 1981



Note: Prior to 1970, NPS reports were based on the custody population. Beginning in 1970, focus is on the jurisdiction population. Both figures are shown for 1977 to facilitate year-to-year comparison.

Figure 1

¹The Bureau of Justice Statistics collects data on State prisoners housed in local jails on an annual basis at the end of each calendar year; it does not collect these data each quarter.

Table 1. Prisoners under jurisdiction of State and Federal correctional authorities, by region and State, year-end 1980 and first and second quarter 1981

Region and State	Total prison population			Percent change from		Number of sentenced prisoners per 100,000 population 6/30/81 ^a
	12/31/80	3/31/81	6/30/81	12/31/80 to 3/31/81	3/31/81 to 6/30/81	
United States	328,695	338,007	339,118	+2.9	+0.2	147
Male	315,427	324,221	324,482	+2.8	+0.0	296
Female	13,258	13,866	14,656	+4.6	+10.6	12
Federal institutions	24,383	24,849	25,733	+2.4	+3.6	9
State institutions	204,332	213,138	213,385	+2.9	+0.1	137
Northeast	45,920	47,683	49,675	+3.7	+4.2	98
Maine	829	830	845	+0.1	+1.2	52
New Hampshire	326	346	360	+6.1	+10.4	39
Vermont ^b	480	523	512	+9.0	-6.7	77
Massachusetts	3,266	3,399 ^c	3,436 ^d	+3.1	+5.1	80
Rhode Island b/d	814	875	891	+7.5	+9.8	69
Connecticut ^e	4,390	4,421	4,386	+0.4	-1.2	99
New York	21,829	22,804	23,147	+4.5	+10.7	137
New Jersey	5,894 ^f	6,070	6,128	+3.2	+12.1	96
Pennsylvania	6,182	6,365	6,497	+2.9	+3.8	71
North Central	66,041	67,326	68,984	+1.9	+4.5	111
Ohio	13,489	15,058	16,454	+11.6	+7.2	134
Indiana	6,683	7,182	7,614	+7.5	+12.4	131
Illinois	11,899	12,228	12,332	+2.8	+5.3	97
Michigan	13,124	13,787 ^{c,f}	15,137	+5.0	+10.1	87
Wisconsin	2,900	4,037 ^g	4,099 ^g	+1.6	+3.0	51
Minnesota	2,001	2,013	2,063	+0.6	+3.1	88
Iowa	2,513	2,579	2,578	+2.6	-0.0	114
Missouri	3,524	3,700	3,598	+5.0	-2.7	91
North Dakota	253	389	395	+52.1	+1.6	60
South Dakota	695	839	848	+20.6	+1.1	72
Nebraska	1,846	1,219	1,295	-35.7	+6.2	117
Kansas	2,494	2,575	2,671	+3.2	+7.1	198
South	144,958	149,424	153,855	+3.1	+6.1	201
Delaware ^b	1,474 ^h	1,572	1,556	+6.6	-5.7	199
Maryland	7,731	7,945	8,377	+2.8	+5.4	439
District of Columbia b/d	3,145	3,271	3,412	+4.0	+4.3	67
Virginia	8,920	8,781	9,153	-1.5	+4.3	256
West Virginia	1,257	1,299	1,313	+3.3	+1.1	247
North Carolina ^d	15,382	16,141	16,093	+4.9	-0.3	238
South Carolina	7,862	8,043	8,257	+2.3	+2.7	217
Georgia	12,210	12,481	13,396	+2.2	+7.3	103
Florida	20,725	21,097	21,579	+1.7	+2.3	168
Kentucky	3,608	3,672	3,776	+1.8	+2.7	173
Tennessee	7,022	7,293	7,693	+3.9	+5.5	150
Alabama	3,961	6,442	6,932	+61.1	+7.6	138
Mississippi	3,374	3,874	3,855	+14.8	-0.5	250
Arkansas	2,925	3,013	3,156	+3.0	+4.7	166
Louisiana	8,089	8,988	9,269	+11.1	+3.1	218
Oklahoma	4,571	4,921 ^h	5,078	+7.7	+3.2	113
Texas ^c	29,892	30,681	30,954	+2.6	+0.9	195
West	47,413	48,785	50,671	+2.9	+7.3	96
Montana	738	790	820	+7.0	+3.8	107
Idaho	617	885	907	+44.2	+2.5	91
Wyoming	524	586	584	+11.8	-0.3	155
Colorado	2,792	2,747	2,630	-1.6	-4.3	73
New Mexico	1,461 ⁱ	1,481	1,484	+1.4	+0.2	117
Arizona	4,372	4,521	4,777	+3.4	+5.6	167
Utah	932	1,019	1,083	+9.3	+6.2	241
Nevada	1,829	1,914	1,925	+4.6	+0.5	118
Washington	4,182 ^j	4,496	4,881	+7.6	+8.6	167
Oregon	3,170	3,003	3,082	-5.3	+2.6	107
California ^k	24,569	25,412	26,792	+3.4	+5.4	155
Alaska ^b	822	891	950	+8.4	+6.6	72
Hawaii ^b	985	1,100	1,107	+11.7	+0.6	

NOTE: Year-end 1980 prisoner counts may differ from those in 1980 because reporting officials are given the opportunity to revise their submissions.

^a 1980 decennial census (April 1980) figures for resident population were used to calculate sentenced prisoners per 100,000 persons for both the States and the Nation as a whole. Sentenced prisoners in this case are prisoners with sentences longer than a year.

^b Figures include both jail and prison inmates; jails and prisons are combined into one system.

^c Figures for inmates under State jurisdiction but not State custody are not available.

^d Figure excludes persons with a split sentence of more than a year, part in prison and part on probation, unless prison portion exceeds one year.

^e Figure excludes 200 prisoners housed in local jails.

^f Figure is for March 1, 1981.

^g Figure excludes an unknown number of prisoners under jurisdiction of correction authorities but housed in mental institutions.

^h Figure includes approximately 120 escapees.

ⁱ Figure may be understated because of record-keeping backlog.

^j Figure excludes 83 State prisoners held in local jails.

^k Figures exclude adult inmates under the jurisdiction of the California Youth Authority.

was small, but the Texas inmate population had grown by nearly 13 percent in 1980. During the 18-month period the system absorbed 4,400 inmates and resorted to housing inmates in tents and having inmates sleep on floors.

The three other State prison systems that have populations of more than 20,000—California, Florida, and New York—also registered large gains. California's and New York's both topped 2,000 and Florida added 850. Both California and New York have relatively recent laws requiring mandatory imprisonment for conviction of certain violent offenses and drug offenses. California also has a habitual offender statute as well that requires imprisonment for repeat offenders. In both States these laws were cited as contributors to growth.

Other States with large increases during the six-month period were Georgia (1,200), Alabama (1,000), Ohio (1,000), and Indiana (900). Alabama's prison population increased by 27 percent in 1980 and 1981. State officials attribute the increase to a sharp rise in the crime rate in the State and less frequent use of probation. Alabama is one of many States under court order to reduce its prison population. Indiana, one of the States to abolish parole completely, has an inmate population that grew by 34 percent during the 1980-81 period and now faces what State officials call a crisis. Indiana State prison officials are admitting 100 more inmates each month than they release, and most State institutions are now at double their rated capacity. The increase is attributed to the combined effects of rising crime and the absence of parole.

	Number	Percent increase over previous period
Midyear 1981	348,695	6.2
Yearend		
1980	328,693	4.5
1979	314,437	2.1
1978	307,276	2.4
1977	300,024	--

The largest numbers of inmates have been admitted to the prisons of the larger States, but smaller States have not been exempt from prison population pressures. For example, North Dakota, Utah, and Alaska, even though their combined prison population is less than 2,400, each experienced a rise in prison population of more than 15 percent during the first six months of 1981. If they each continue at the same rate until yearend they will experience annual growth rates of 36 percent (North Dakota), 35 percent (Utah), and 34 percent (Alaska).

All in all, 14 States posted gains of more than 10 percent during the first half of 1981, and another five States had gains of close to 10 percent. As unprecedented as these increases were, for several States they occurred on top of especially large increases during 1980, compounding the effect for the period as a whole. For example, prison populations increased by 25 percent or more during the 18-month period in six States: North Dakota (59 percent), Indiana (34 percent), Hawaii (29 percent), Alabama and Arizona (27 percent), and Alaska (25 percent). Both

Table 3. Changes in prison populations for selected States from 12/31/79 to 6/30/81

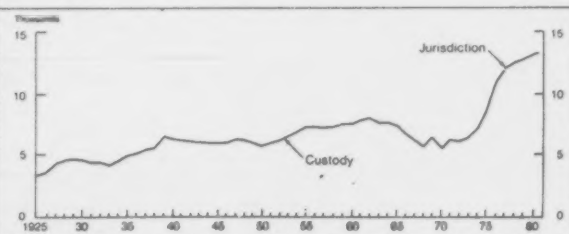
State	12/31/79	6/30/81	Percent change
North Dakota	185	295	58.4
Indiana	5,667	7,614	34.4
Hawaii	836	1,107	29.1
Arizona	3,749	4,777	27.4
Alabama	5,464	6,932	26.5
Alaska	750	938	25.0
Colorado	2,056	2,610	27.1
Minnesota	2,094	2,663	27.1
Oregon	3,179	3,982	25.1
New Mexico	1,356	1,404	3.5

Alaska and Hawaii operate combined jail-prison systems, and part of their increase was in their jail population. Officials in Hawaii cited tightening up of bail and of release on own recognizance procedures as increasing their pretrial detainees and stricter parole procedures as increasing their sentenced population. North Dakota, which is not experiencing space problems, attributes its 59 percent increase to the boom atmosphere created by energy exploration.

Four States—Colorado, Minnesota, New Mexico, and Oregon—managed to decrease their prison populations during 1980 and 1981, but the combined decrease was only 320 inmates. In 1978 Colorado passed a presumptive sentencing law that reduced the average length of sentence served in that State. However, this effect has been largely offset by an increase in new court commitments. A Minnesota official attributes that State's lack of growth to sentencing guidelines that take into account prison capacity and to increased use of parole. New Mexico's decrease is part of the aftermath of the prison riot that occurred early in 1980. The use of probation in New Mexico has increased by 30 percent, resulting in a decrease of 17 percent in the number of inmates under a minimum-security classification. Oregon, under court order a year ago, has revised its parole guidelines and increased reliance on probation to hold down its inmate count.

Record increases in the prison population were accompanied by record incarceration rates.² The United States now imprisons 147 persons for every 100,000 in the general population. Incarceration rates vary

Number of sentenced female State and Federal prisoners, yearend 1925 - midyear 1981



Note: Prior to 1979, NPS reports were based on the custody population. Beginning in 1979, focus is on the jurisdiction population. Both figures are shown for 1977 to facilitate year-to-year comparison.

Figure 2

²Incarceration rates are based only on those prisoners sentenced to more than a year to minimize differences between States with constant jail-prison systems and those without.

markedly among the States reflecting a wide range of factors from degree of urbanization to the age-sex composition of the population to social, economic, and cultural influences. On June 30, 1981, Vermont's incarceration rate was 39; North Carolina's was 256. Both States form part of a larger pattern. New England States tend to have the lowest incarceration rates and Southern States the highest. The District of Columbia, a wholly urban area, had a rate of 439 per 100,000 population.

The rate of growth for the female prison population during the first half of 1981 exceeded that for prisoners as a whole. During the first six months of 1981 the number of women in prison grew at a rate equivalent to 22 percent a year. At midyear the number of female inmates was 14,656, a gain of

1,400 in six months. This was by far the most substantial gain recorded in the female offender population since the series began in 1925. Nevertheless, women still constitute only 4.2 percent of the total prison population.

Further reading

The Bureau of Justice Statistics Bulletin Prisoners in 1980 reports prison population developments during 1980. A final report containing additional detail will be published later in 1981 under the title Prisoners in State and Federal Institutions on December 31, 1980. Annual reports under the same title are available for the years 1971 through 1979.

Other Bureau of Justice Statistics Bulletins include Measuring Crime,

February 1981, The Prevalence of Crime, March 1981, and Capital Punishment 1980, July 1981.

To obtain copies of any of these publications or to be added to the Bulletin mailing list, write to the Bureau of Justice Statistics, Washington, D.C. 20531.

Bureau of Justice Statistics Bulletins are prepared principally by the staff of the Bureau. Carol B. Kalish, chief of policy analysis, edits the Bulletins; Marilyn Marbrook, head of the Bureau publications unit, administers their publication, assisted by Julie A. Ferguson. The principal author of this edition is Ms. Kalish.

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Bulletin

Attachment D

Corrections Division
Law Enforcement Assistance Administration

LEAA PROGRAM BRIEF

Information Guide for Legislators,
Correctional Administrators and Prison Industry Managers.

FREE VENTURE PRISON INDUSTRIES

June 1981

THE PROBLEM

The typical state prison industry program falls far short of its full potential as an economic employment enhancement endeavor. The secure custodial environment, tightly circumscribed by state government policies, is a significant obstacle.

The absence of clear goals and valid measurements leads to a lack of concern for production and creates an artificial environment for industrial operation. With no concern for productivity and with excessive costs, profits become an unrealizable objective. Thus, the industry program bears little resemblance to its free world counterpart.

The prisoners employed in such operations have virtually no chance to develop the work habits and skills that will be essential to employment success after their release from prison. Furthermore, prisoners are unable to develop an appreciation of the requirements set by private industry for employees.

For a state prison industry program to fulfill its full economic and employment potential, it must attack the artificial environment that pervades most programs. It must focus on individual accountability and performance requirements, as well as on production goals and profitability in an attempt to become a viable economic entity. In short, prison industries must begin to act like the normal industrial counterparts in the free world.

BENEFITS

States which transform their prison industry programs into operations that emulate free world business can expect to achieve a number of benefits:

- . development of real world work habits and job skills for prisoners with little employment history;
- . expanded work opportunities within the institution, with a resultant reduction in idleness and its debilitating results;
- . increased institutional tranquility as a consequence of a decrease in the rate of disciplinary infractions;
- . significant financial rewards for prisoners employed, which allow for family support, restitution payments taxes, and other financial goals.

PROMISING ANSWERS

This document describes the LEAA Free Venture Prison Industry Program which addresses the problem of unrealized potential endemic to most contemporary correctional industries. The program embodies a series of principles which fuse the twin goals of economic feasibility and employment enhancement.

An independent evaluation of the program has demonstrated that it succeeds in creating industry operations that are markedly different from traditional prison industry programs. Working hours are longer, wages higher, and featherbedding reduced in comparison with traditional prison operations. Personnel procedures, productivity expectations and overall shop atmosphere resembled private sector enterprises. The evaluation concluded, "Free Venture prison industries are an important part of the correctional environment for inmates who wish to help support themselves, develop a skill, prepare for release, or relieve the strains of incarceration."

Promising implementation strategy objectives for revitalizing prison industries, discussed more fully in a later section of this brief, include the following:

- . Conduct a system-wide assessment which both diagnoses industry problems and prescribes appropriate changes.
- . Develop new product lines that allow for economic self-sufficiency and expand the need for prison labor.
- . Lengthen the industry work day to maximize the return on plant and equipment.
- . Reduce the number of interruptions to the work day through greater control of scheduling.
- . Create bonus wage plans as incentives to increase productivity.
- . Set realistic production standards in order to define work expectations and set a tone for the shop.
- . Design and install accounting and management information systems which generate the data necessary for informed industrial management decision-making.
- . Develop sales goals for the operation which target on self-sufficiency for the entire industry program.
- . Establish links with other correctional programs to both obtain better trained workers and to increase post-release employment prospects.

- . Form an industrial advisory board to serve as a sounding board, source of technical expertise, and ally in presentations to "outside" forces (e.g. governor, legislature, etc.).

I. INTRODUCTION

Central to the Free Venture Program is the belief that it is possible to operate profit-making business ventures inside a prison which are staffed by trained, motivated, and highly productive prisoner-employees. Further, it is asserted that the creation of such an environment within the confines of the prison is absolutely essential to providing prisoners with realistic work habits and job skills.

PROGRAM HISTORY

LEAA's interest in state prison industry programs was first expressed as a research effort in 1975. The thrust of this research was to develop a model for prison industries that would blend economic and employment enhancement objectives. Free Venture, formulated after a year of intensive study in Connecticut, became that model.

The next phase was the development by LEAA of prototype programs to assess the feasibility of the ideas generated during research; demonstration sites in Connecticut, Minnesota, and Illinois were funded in early 1977.

To fully assess the institutional impacts of such a dramatic revision to traditional correctional practices, four additional demonstration sites were funded in the fall of 1978. Prison industries of South Carolina, Iowa, Colorado, and Washington were selected. Shortly afterwards, LEAA initiated an evalua-

tion of the seven state effort to assess both the institutional and the economic impacts of Free Venture upon the correctional systems involved.

In addition to funding, LEAA has provided technical assistance to these seven states through a grant to the American Institute of Criminal Justice (formerly the American Foundation's Institute of Corrections). AICJ has provided a wide variety of management and technical assistance to each participant state and additional assistance to other selected jurisdictions. AICJ has published a series of prison industry manuals and has generally served as LEAA's principal advisor on prison industry matters.

Since 1975, LEAA has provided almost \$4 million in discretionary funds to participating states, and over \$2 million for research technical assistance, and evaluation.

The outcome has been to demonstrate that state prison industry programs can become economically self-sufficient while providing prisoners with an employment experience which will aid their prospects for successful reintegration into society at release. Equally important, an effective prison industry program can offset the deteriorating effect of prison life.

II. IMPLEMENTATION STRATEGY

States seeking to revitalize prison industry through the Free Venture approach should be prepared to perform a systematic assessment of their entire industrial operation before attempting to implement a new program. This assessment should be both diagnostic and prescriptive in that it not only pinpoints ob-

stacles to revitalization, but also develops a strategic plan for overcoming those impediments.

ASSESSMENT TASKS

. Market Analysis

To determine what products and services are now being purchased by the prison industry's potential customers; this analysis will also include a measurement of the proportion of available markets now being captured by prison industries.

. Production Analysis

To determine the capability of the operation to support itself with the present mix of equipment and manpower.

. Personnel System Analysis

To determine the process by which an industry, similar to the one contemplated, obtains its work force. What special eligibility criteria might be applied by the institution? Who establishes manning levels for each shop? How and for what reasons are workers dismissed?

. Financial Systems Analysis

To assess the ability of the present system to generate the data necessary to make decisions regarding planning, product line, pricing, profitability, and manpower performance.

. Management Analysis

To determine the process by which the resources of people

and equipment are organized for production. Special attention must be paid to relationships between industrial management and the administration of the correctional system, and to the interface between industry and state government in general.

. Correctional Environment Analysis

To determine the "fit" between industrial program needs and the policies and procedures of the host institution. Schedules for meals and counts, custodial staffing requirements, prohibited materials, competition with other programs, classification practices, and a host of other issues should be reviewed with institutional management staff, and potential conflicts uncovered before implementation can begin.

After thorough analysis and plans formulation, implementation can begin.

IMPLEMENTATION STEPS

. Develop new product lines

The market analysis is essential to the Free Venture Model in the search for new products. State governments and municipalities typically purchase a vast array of products, many of which are suitable for manufacture within the prison. Initial data on purchase volume, information on vendors now supplying the state, contract prices, capital necessary to launch the operation, cost of production, sales volume necessary to achieve break-even, and related information prior to engaging in the manufacture of the selected item are all elements of the Free Venture market assessment step.

. Lengthen the work day

The typical work day for many prison industries is 5½ hours. Prison industry can realize tremendous gains by increasing the number of hours available for work, but this is no simple task within the typical institution. Nevertheless, with proper planning and the support of key administrators, the work day can be extended without major turmoil. Each of the seven states participating in the demonstration effort were successful in achieving this objective.

. Control interruptions during production hours

The number of intrusions into the work day should be minimized. This too will require the close cooperation of institutional management and may necessitate the re-scheduling of other institutional services (commissary, barbers, showers, etc.) for implementation of the Free Venture Model.

. Establish a bonus system

A bonus plan for prisoners should be instituted to supplement normal wages as an incentive to increase productivity. Bonus systems are common in industry and are most effective when concern for product quality is balanced with that for product quantity. Demonstration states utilizing bonus plans have seen productivity increases greater than their most optimistic expectations.

. Set production standards

Creation of production standards based on both equipment and labor output potential also serve to raise quality and productivity. The definition of manage-

ments expectations in the form of production standards helps set the tone for a shop, and begins to approximate the conditions the prisoner will encounter in the outside world of work.

. Install appropriate management information and cost accounting systems

Prison industry managers need good information and particularly cost data to make informed decisions. Establishing reporting and recording systems that present useful factual information to the management is essential.

. Sales goals should be adequate to cover all costs

Free Venture prison industries seek to become economically self-sufficient operations. Shop operations that cannot be self-sufficient should be targeted for replacement by new ventures, unless there are other compelling reasons for their continuation.

. Seek links with other correctional programs

Free Venture prison industries need trained workers, and should share responsibility with other programs for assisting in the released prisoner's employment search.

To accomplish these ends:

- . Seek ties with institutional vocational education programs so that vocationally trained workers can be placed in a prison industry job which will draw on and reinforce their training;

Work closely with persons involved in the prisoner's release plans --- job placement counselors, parole officers, community-based

placement agencies--- so that the work history developed within the institutional setting can aid in outside employment;

- . Provide realistic data to parole boards on work attitudes, performance, and potential employability of prisoner workers when they are considered for parole or other community placement;
- . Form a Prison Industry Advisory Board composed of private citizens representing business, labor and consumer interests in the state. Much expertise is available through such a board. Furthermore, such a knowledgeable group can provide important representation for the industry program with the legislature and the general public.

II. SPECIAL LESSONS

. Marketing

Experience in three Free Venture states has shown that there is a sizable market available for prisoner made products in local units of government and non-profit organizations. In order to capture this market, industry management must develop an aggressive marketing strategy which is aimed specifically at meeting these customer's demands regarding product price, quality, and delivery schedules.

. Production

Redesign of plant layouts reduces material waste and enables the industry to approximate real world productivity standards. Design and implementation of improved quality control standards result in fewer customer complaints, which is crucial to marketing prisoner made goods.

. Accounting

Design and implementation of a manual accounting system which compliments the Department of Corrections system is critical to the processing of cash receipts in the manner approved by the state auditing system.

Design and implementation of a job-order and/or standard cost system provides Free Venture managers with the information required to make business decisions such as income determination, inventory evaluation, and pricing strategies.

. Work Day Length

Real world productivity rates cannot be approximated unless there is a full work day. Curtailment of shop call outs or movement to second shift operations were found to be among the best means of insuring a full work day in Free Venture shops.

. Control Over Workforce

Free Venture hire and fire procedures have demonstrated in a number of states that industry personnel can maintain control over crucial personnel assignment/termination decisions without infringing on the legitimate security concerns of the institutions.

III. SUCCESSFUL DEMONSTRATIONS

Each of the seven states presently involved in Free Venture has chosen a slightly different model, and thereby has enriched our understanding of the options available in the process.

. South Carolina

South Carolina is testing the Free Venture approach at an institution for youthful offenders serving relatively long sentences.

The institution houses a large furniture factory which manufactures, repairs, and upholsters a variety of furniture items. The factory operates on a double shift, with 175 prisoners during the day and 60 in the evening shift.

Prisoners employed receive a base wage plus a bonus payment under a profit sharing plan. The program realized a profit for the first time during the fourth quarter of fiscal year 1980, and bonuses distributed. The first quarter of fiscal year 1981 also closed with a profit. South Carolina intends to apply the Free Venture approach to other industry programs now being planned.

Illinois

Free Venture has been established at three institutions. The program includes a furniture refinishing and upholstery plant, a data entry facility, a mattress factory and an automotive services shop. Illinois has rebounded significantly as a result of both a change in management and a comprehensive program of technical assistance. One of the key tasks confronting Illinois is its attempt to "turn around" the program was the creation of a complete general ledger accounting system; another was the development of appropriate cost accounting systems.

Technical assistance was provided which ranged from the development of detailed production schedules for long term orders received to the reorganization of the management team. Assistance was provided in the financial management and accounting area that included construction of the general ledger and compilation of financial statements for fiscal year ended June 30, 1979, and the design and implementation of general ledger accounting system, including the development of an internal audit program. The audit of the two years ending March 31, 1980 acknowledged the improvements in internal controls and provided certification of the balance sheet as of June 30, 1980.

With basic financial and production systems now in place, Illinois expects to meet or exceed the break even point during fiscal year 1981.

. Minnesota

Minnesota's implementation of the Free Venture program has focused in part, on an effort to form relationships with private sector firms. At Lino Lakes, a medium custody facility, approximately 90 of the 110 prisoners are employed in the program. Contracts with private firms to repair consumer electronic products, refurbish metal and plasticast components, manufacture gourmet "knife blocks", and other tasks employ most of the prisoners housed at the facility.

A school bus repair program has been initiated at the maximum security institution at Stillwater. Wages paid to workers in this shop like at Lino Lakes, are more than three times higher than wages paid to traditional prison industry workers. The shop has consistently generated a profit and has achieved productivity levels comparable to those found in outside facilities that are similarly equipped.

. Iowa

Iowa chose to implement the Free Venture program in a minimum custody setting. The Division of Corrections rented space in an industrial park a short bus ride away from a small institution in the Des Moines area. Seventy workers were employed in a printing plant, an auto repair shop, and an "outside services" (e.g. office moving) detail. Prisoner workers were paid at minimum wage levels, and spent a full day on the job with no outside disruptions. This off-site industrial venture operated at a break-even level or better almost since its inception. Experience with this program led Iowa to attempt even further change within this setting.

IV. AGENDA FOR ACTION

. Private Sector Involvement with Prison Industries

By virtue of legislation passed by Congress in 1979, state prison systems are being encouraged to collaborate with private sector firms in joint ventures to employ prisoners in productive--and profitable--prison based enterprises. This legislation, an extension of the Free Venture concept, is aimed at even more closely replicating the real world of work within the confines of the prison. By its provisions, participation states are enabled to transport prison made goods across state lines to available markets, and also sell to the federal government.

. Current Status and Future Prospects

It is unlikely that capital funds will be available from the federal government for new state programs; the states will have to provide those funds. However, technical assistance will be required for some years and this will require federal sponsorship. The prospects for such are not known at the time of this writing.

. National Technical Assistance

The American Institute of Criminal Justice (AICJ) was funded by LEAA to provide technical assistance to the seven Free Venture demonstration states and to states involved in joint ventures with the private sector. AICJ has provided short-term technical assistance to other states on a limited basis through the same funding. Extensive assistance has been available through this organization on a fee-for-service basis; if there is not federal support, all assistance may be of this type.

. Training

The National Institute of Corrections funds a training seminar for prison industry managers intended to enhance basic managerial skills.

It is also available to Free Venture managers. The seminar focuses on the following topics.

- . Management
- . Standards
- . Marketing-Production
- . Fiscal Management
- . Human Relations

. Automated Information Systems

The Bureau of Justice Statistics has contracted with Sterling Systems, Inc., to design software for the Free Venture Prison industry program, automating many of the business systems (e.g. accounting, production scheduling, inventory control) now being operated manually. When completed, the system will significantly enhance the management capacities of the demonstration states and be transferable to other Free Venture prison industry operations.

. Cost Accounting Systems

Renzi, Pinti & Co., a firm of Certified Public Accountants and Management Consultants, has worked under subcontract to AICJ to design a cost accounting system for Free Venture industries.

Portions of this system have been successfully implemented in Illinois, Connecticut and South Carolina. This system is described in Volume VII of AICJ's Guide to Effective Industries "Cost Accounting Practices for Prison Industries" which is planned for release in the Fall of 1981.

V. SOURCES OF INFORMATION AND ASSISTANCE

A. Selected Bibliography

1. A Guide to Effective Prison Industries, 1979 available from the American Institute of Criminal Justice.

Volume 1: Creating Free Venture Prison Industries:
Program Considerations

Volume 2: Product Selection and Market Research:

Business Processes for Prison Industries

Volume 3. Issues in Management and Organization for
Prison Industries

Volume 4. General Principles of Industrial Engineering
for Prison Industries

Volume 5. Applications of Industrial Engineering Prin-
ciples in a Prison Manufacturing Operations:
Furniture

Volume 6. Applications of Industrial Engineering Prin-
ciples in a Prison Service Operation: Printing

Volume 7. Cost Accounting Practices for Prison Industries.
Fall, 1981

Volume 8. Legal Problems in State Prison Industries:
Fall, 1981

2. Evaluation Report on Free Venture Prison Industries, (9 volumes)
1980, published by University City Science Center, Available
through the National Criminal Justice Reference Service (NCJRS).
3. Free Venture Prison Industry Resource Management and Information
Systems, Functional and Data Requirements Report, (1980), Sterling
Systems, Inc.
4. Analysis of Phase I Follow up Data-First and Second Interim Report
on the Free Venture Evaluation, (June, 1980) Minnesota Department
of Corrections Research Report.

B. LEAA Free Venture Project Contacts:

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Springfield, Illinois 62706

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Division of Correctional Industries
6385 N. Academy Boulevard
Colorado Springs, Colorado 80907

Karl Petterson
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Adult Corrections Division
D.S.H.S.
Mail Stop RN-61
Olympia, Washington 95804

Tom Grogan
Minnesota Correctional Industries
430 Metro Square Building
7th & Robert Streets
St. Paul, Minnesota 55101

C. Sources for Technical Assistance:

Service

American Institute of Criminal Justice
1315 Walnut Street
Philadelphia, PA 19107
Telephone: (215) 732-7151

General Technical Assistance

Renzi, Pinti, and Company
Suite 2812
PSFS Building
12 South 12th Street
Philadelphia, PA 19107
Telephone: (215) 625-0303

Accounting Systems

University City Science Center
3624 Market Street
Philadelphia, PA 19104
Telephone: (215) 387-2255

Evaluation and Economic Analysis

Sterling Systems, Inc.
1749 Old Meadow Road
McLean, Virginia 22101
Telephone: (703) 827-9000

Management Information System

National Institute of Corrections
320 First Street, N.W.
Washington D.C. 20534
Telephone: (202) 724-3106

Training

Search Group, Inc.
925 Secret Reiver Dr., Suite H
Sacramento, California 95831
Telephone: (916) 39202550

Management Information Systems

RESPONSE OF MICHAEL E. SHERMAN
TO SUBMITTED QUESTIONS OF SENATOR MATHIAS

1. Can states be relied on to provide human incarceration?

Litigation to determine the exact meaning of the Eighth Amendment's prohibition of cruel and unusual punishment is currently a highly active area. Minimum standards are only beginning to emerge from the case law, but a few points are now clear.

The first is that the record of the states in providing decent prisons has been uneven in the past. Although conditions in the majority of state prisons and local jails have not raised serious constitutional questions, an unconscionably large minority have. The attached list identifies seven states (Alabama, Arkansas, Florida, Mississippi, Oklahoma, Rhode Island and Tennessee) whose entire state prison systems were found by federal courts to violate the Eighth Amendment. Another fourteen states on the list were found to operate one or more specific institutions in violation of the Constitution.

These unconstitutional state practices do not reflect deliberate intentions to flout the law. They reflect, rather, the absence of any clear, national standard for acceptable correctional practice. Professional correctional organizations are now in broad general agreement on the basic elements of such a standard, but it does not carry the force of law, and is observed in no more than half of state and local institutions. As a result, conditions which most Americans would consider cruel and unusual are tolerated in a few states adhering to lower (or no) standards. The second point, therefore, is that legislation likely to effect major change in correctional systems should reflect the need for specification of acceptable conditions.

Table 2.1
Litigation Involving Prison Conditions and Crowding, April 1980

State	Affected Institution	Status	Case
Alabama	State System	Court order; Receiver appointed 468 F Supp 628 (M.D. Ala. 1979)	<i>Pugh v. Locke</i> , 406 F Supp 318 (M.D. Ala. 1976)
Arizona	State Penitentiary	Preliminary orders limiting prison population and reclassification	<i>Harris v. Caldwell</i> , C.A. No. 75-185, PHX-CAM (D. Ariz.)
Arkansas	State System	Court order; Special Master appointed	<i>Finney v. Mabry</i> , 458 F Supp 720 (E.D. Ark. 1978)
Colorado	Maximum Security Penitentiary	Declared unconstitutional and ordered closed, partial stay issued pending appeal (10th Cir. 380)	<i>Ramos v. Lamm</i> , C.A. No. 77-K-1093 (D. Col. 12/20/79)
Delaware	State Penitentiary	Court order	<i>Anderson v. Redmon</i> , 429 F Supp 1105 (D. Del. 1977)
Florida	State System	Court order	<i>Costello v. Wainwright</i> , 397 F Supp 20 (M.D. Fla. 1975)
Georgia	State Penitentiary at Reidsville	Court order; Special Master appointed	<i>Guthrie v. Evans</i> , C.A. No. 3068 (S.D. Ga.)
Illinois	State Penitentiary at Menard	Court order	<i>Lightfoot v. Walker</i> , C.A. No. 78-2095 (S.D. Ill. 2/19/80)
Indiana	State Penitentiary at Pendleton	Pending	<i>French v. Owens</i>
	State Penitentiary at Michigan City	Pending	<i>Wellman v. Faulkner</i> , 1P79-37-C (S.D. Ind.)
Iowa	State Penitentiary	Pending	<i>Watson v. Ray</i> , C.A. No. 78-106-1, filed 12/28/79 (S.D. Ia.)
Kentucky	State Penitentiary and Reformatory	Court order (by consent decree)	<i>Kendrick v. Carroll</i> , C76-0079 (W.D. Ky.) and <i>Thompson v. Bland</i> , (April 1980)
Louisiana	State Penitentiary	Court order	<i>Williams v. Edwards</i> , 547 F.2d 1206 (5th Cir. 1977)
Maine	State Penitentiary	Pending	<i>Lovell v. Brennan</i> , C.A. _____ (D. Me.)
Maryland	2 State Penitentiaries	Declared unconstitutional	<i>Johnson v. Levine</i> , 450 F.Supp 648 (D. Md. 1978), <i>Nelson v. Collins</i> , 455 F.Supp 727 (D. Md. 1978)
Massachusetts	Maximum Security Unit at Walpole	Pending	<i>Blake v. Hall</i> , C.A. 78-3051-T (D. Mass.)
Mississippi	State System	Court order	<i>Gates v. Collier</i> , 501 F.2d 1291 (5th Cir. 1974)
Missouri	State Penitentiary	Court order	<i>Burks v. Tensdale</i> , 603 F.2d 59 (8th Cir. 1979)
Nevada	2 State Penitentiaries	Pending	<i>Maginnis v. O'Callaghan</i> , C.A. No. 77-0221 (D. Nev.)
New Hampshire	State Penitentiary	Court order	<i>Laaman v. Helgesmo</i> , 437 F Supp 269 (D. N.H. 1977)

State	Affected Institution	Status	Case
New Mexico	State Penitentiary	Pending	<i>Duran v. Apodaca</i> , C.A. No. 77-721-C (D. N.M.).
North Carolina	Central Prison at Raleigh	(NO INFORMATION AVAILABLE)	
	Women's Prison	Pending	<i>Barton v. State Gov't of North Carolina</i> , C.A. No. 80-143-CRIT-5 (E.D. N.C.), filed February 25, 1980.
Ohio	State Penitentiary at Lucasville	Court order	<i>Chapman v. Rhodes</i> , 434 F Supp 1007 (S.D. Oh. 1977).
	State Prison at Columbus	Court order by Consent Decree: to close in 1983.	<i>Stewart v. Rhodes</i> , C.A. No. C-2-78-220 (S.D. Ohio) (12/79).
	State Prison at Mansfield	Pending	<i>Boyd v. Denton</i> , C.A. 78-1054A (N.D. Oh.).
Oklahoma	State System	Court order	<i>Buttle v. Anderson</i> , 564 F 2d 388 (10th Cir. 1977).
Rhode Island	State System	Court order; Special Master appointed.	<i>Palmigiano v. Garrahy</i> , 433 F Supp 956 (D. R.I. 1977).
South Carolina	State Penitentiary	Pending	<i>Mattison v. South Carolina Board of Corrections</i> C.A. No. 76-318.
Tennessee	State System	Declared unconstitutional; preliminary order closing one unit.	<i>Trigg v. Blanton</i> , C.A. No. A6047- Chancery Court, Nashville.
Texas	State System	Pending	<i>Ruiz v. Estelle</i> , trial ended summer, 1979.
Utah	State Penitentiary	Pending	<i>Nielson v. Matheson</i>
Washington	State Reformatory (Walla Walla)	Pending	<i>Collins v. Rhay</i> , C.A. No. C-7813-V (W.D. Wash).
Wyoming	State Penitentiary	Court order by consent decree	<i>Bustos v. Herschler</i> , C.A. No. C-76-143-B (D. Wyo.).

Source: National Prison Project of the American Civil Liberties Union Foundation, 1980.

Thirdly, in an era of fiscal constraint, states may face a conflict between more space and better space. As Senate Bill 186 now stands, nothing prevents a state with a substandard institution from continuing to operate that institution while using its federal funds to build other institutions. Crowding is only one form of cruelty. While it may be alleviated by simple expansion of prison capacity, other problems stemming from outmoded design, poor maintenance, and unsanitary conditions can and will persist if not explicitly addressed.

Finally, because the formula for allocation of funds proposed by S. 186 involves conditions only indirectly, significant portions of the money would go to states with either less severe problems or less enthusiasm for correcting them. Because the humanitarian goals of the bill are so important, it is critical that every effort be made to concentrate funds in achieving them.

2. What states could use prison more selectively?

According to surveys conducted in 1978 and 1979 (the most recent data available), only half of all state prisoners have been convicted of violent offenses. The surveys do not provide details on the property crimes (one-third of the population) and offenses against public order (one-sixth) which brought the non-violent offenders to prison, but an examination of the variation among states (see attached table) clearly suggests that on questions of whom to incarcerate, state standards are as diverse as they are on conditions of incarceration. It would be inappropriate to single out states as overly incarcerative solely on the basis of these data, since they do not take account of

- differences in state crime patterns;
- use of jail rather than prison for non-violent offenders;
- prior records of offenders; or
- variation in time served.

Nevertheless, it is difficult to advance causes which would account for the incarceration practices of states where non-violent offenders outnumber violent offenders by three to one (Arkansas) or two to one (Mississippi, Kentucky, Missouri or Wyoming), particularly when these states are holding their prisoners in unconstitutional conditions.

Table A.4
Total Males in Federal and State Adult Correctional Facilities
by Type of Crime -- March 31, 1978

	Type of Crime			Public Order Or Other
	Total	Violent	Property	
NORTHEAST	33,117	14,957 (45%)	12,435 (38%)	5,725 (17%)
Maine	834	349	346	139
New Hampshire	236	119	92	25
Vermont	117	50	39	28
Massachusetts	2,297	1,886	231	180
Rhode Island	557	335	144	78
Connecticut	—	—	—	—
New York	16,498	4,749	8,578	3,171
New Jersey	5,701	3,179	1,491	1,031
Pennsylvania	6,877	4,290	1,514	1,073
NORTH CENTRAL	52,339	27,734 (53%)	17,386 (33%)	7,219 (14%)
Ohio	11,687	6,349	3,071	2,267
Indiana	3,671	2,343	1,128	200
Illinois	10,289	7,193	2,343	753
Michigan	11,841	5,402	3,894	2,545
Wisconsin	2,937	1,451	1,261	225
Minnesota	1,790	929	720	141
Iowa	1,700	694	982	24
Missouri	5,003	1,933	2,434	636
North Dakota	283	122	104	57
South Dakota	—	—	—	—
Nebraska	1,055	280	560	215
Kansas	2,083	1,038	889	156
SOUTH	100,000	44,238 (44%)	41,165 (41%)	14,597 (15%)
Delaware	0	0	0	0
Maryland	6,845	3,223	1,980	1,642
Dist. of Columbia	1,002	551	323	128
Virginia	7,246	4,028	2,222	996
West Virginia	1,238	479	591	168
North Carolina	13,421	3,717	7,627	2,077
South Carolina	5,339	1,954	2,347	1,038
Georgia	8,592	4,666	3,233	693
Florida	16,263	8,244	5,481	2,538
Kentucky	3,441	1,175	1,643	623
Tennessee	4,792	1,938	2,320	534
Alabama	—	—	—	—
Mississippi	1,675	602	753	320
Arkansas	2,274	625	1,521	128
Louisiana	1,832	756	783	293
Oklahoma	3,526	1,659	1,385	482
Texas	22,514	10,621	8,956	2,937
WEST	32,935	16,147 (49%)	9,232 (28%)	7,556 (23%)
Montana	600	152	288	160
Idaho	769	272	375	122
Wyoming	409	149	158	102
Colorado	2,331	1,304	769	258
New Mexico	1,692	546	549	597
Arizona	2,815	1,378	828	609
Utah	789	232	502	55
Nevada	1,141	617	393	131
Washington	3,694	1,556	1,635	503
Oregon	639	245	358	36
California	17,269	9,360	3,149	4,760
Alaska	394	148	134	112
Hawaii	393	188	94	111
Total States	218,391	103,076 (47%)	80,218 (37%)	35,097 (16%)
Federal	23,916	7,169 (30%)	5,468 (23%)	11,279 (47%)
Total State plus Federal*	242,307	110,245 (46%)	85,686 (35%)	46,376 (19%)

Source: Survey of State and Federal Adult Correctional Facilities (PC-2), 1978.

*Data are missing on 8 percent of prisoners

ADDITIONAL CORRESPONDENCE



Administrative Services Division
Field Services Division
Adult Facilities Division
Juvenile Facilities Division
Education and Training Division

BRUCE KING, GOVERNOR
ROGER W. CRIST
SECRETARY

STATE OF NEW MEXICO CORRECTIONS AND CRIMINAL REHABILITATION DEPARTMENT



111 Washington
Santa Fe, New Mexico 87501
(505) 827-3222

May 25, 1981

The Honorable Charles Mathias, Jr.
United States Senate
Criminal Law Sub-Committee
Room 162
Russell Building
Washington, D.C. 20510

ATTENTION: Mr. Charles Borden, Administrative Assistant

Dear Senator Mathias:

During the past year, the New Mexico Corrections Department has implemented an ambitious prison construction program in excess of \$100 million. The construction program was addressed with a 1981 Master Plan study, which developed a ten-year plan for prison construction in the State of New Mexico. In addition, an extensive modernization program was funded by the 1981 New Mexico Legislature, which will expand and upgrade programs, staffing, and security in our probation and parole, adult and juvenile corrections system. In addition, the New Mexico Corrections Department is also committed and actively involved in gaining American Corrections Association accreditation at the Central Office and field level.

In reference to Senate Bill 186, I am in general agreement with the intent and criteria established under this legislation, however, I have addressed the following concerns.

Section 202, which promulgates criteria to measure volume of criminal justice activity. The criteria may have negative effects on a geographically large, low population state, such as New Mexico. I feel that the criteria should measure criminal activity on a population per capita ratio. I also feel that the criteria for the funding formula should be contingent with American Correctional Association Standards. A monitoring system may be beneficial to insure compliance with the accreditation process. The criteria, under Senate Bill 186, requires a state plan for a seven-year period. As I addressed earlier, the State of New Mexico has endorsed a ten-year Master Plan Construction Program for the Corrections Department. Are states, such as New Mexico, eligible to receive funding for master plans developed prior to the effective date of this legislation?

In summary, the legislation will certainly assist states which are currently overcrowded and lack the appropriate funding to relieve overcrowding and provide the necessary modernization, which is required to provide a decent, safe and humane corrections system for staff and inmates. A key issue, under this legislation, is to insure compliance with American Corrections Association standards in regard to prison construction and programming. With this dual assistance of federal assistance and accreditation, the criminal justice system will begin to move forward and provide the image of a proactive, rather than a reactive, system.

Sincerely,

Roger W. Crist
Roger W. Crist
Secretary

RWC:rs



STATE OF DELAWARE
DEPARTMENT OF CORRECTION
100 N. MARKET STREET
DOVER, DELAWARE 19901

PHONE (302) 678-5601
(302) 653-5813

May 28, 1981

The Honorable Charles Mathias
Chairman, Criminal Justice Subcommittee
Judiciary Committee
Russell Senate Office Building - Room 358
Washington, D.C. 20510

RE: S. 186: Criminal Justice Construction Reform Act

Dear Senator Mathias:

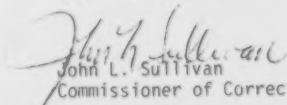
I regret that I was unable to appear before your committee and personally testify as to S.186. Please accept these comments in support of the proposed legislation.

Like most states, Delaware has limited resources with which to deal with its expanding prison population and the myriad of problems attendant thereto. The legislation which Senator Dole has introduced directly addresses the need to assist states financially in order to effect much needed changes in the criminal justice system.

I particularly support Senator Dole's bill as it pertains to halfway houses, minimum detention and short term custody facilities; these facilities are much in need in this state. Federal support is crucial to these and to all our institutions and programs in Delaware's Department of Correction.

Please feel free to contact me if I can be of further service to you or if you have any questions about my support of the Criminal Justice Construction Reform Act.

Very truly yours,


John L. Sullivan
Commissioner of Correction

JLS:fb

cc: File



ARIZONA STATE JUSTICE PLANNING AGENCY
111 WEST MONROE STREET
SUITE 600
PHOENIX, ARIZONA 85003
TELEPHONE (602) 255-5448

BRUCE BABBITT
GOVERNOR

HEINZ R. HINK
CHAIRMAN

RICHARD C. WERTZ
EXECUTIVE DIRECTOR

May 28, 1981

The Honorable Charles Mathias
358 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Mathias:

I am writing to you to express support for S. 196 sponsored by Senator Dole. I offer this testimony for the record to illustrate why this is very timely legislation for Arizona and why it is urgently needed.

As has occurred in many other states, Arizona prisoners have filed class action lawsuits in federal district court alleging substandard, unconstitutional conditions in Pima and Maricopa Counties (which contain Phoenix and Tucson, our two largest cities) and in Yuma County. Simultaneously, the State Department of Corrections came under federal judicial order to reduce inmate overcrowding at Arizona State Prison. Counties and towns were faced with the possibility of having jail standards mandated by the federal judiciary through an adversary process.

It was in this sequence of events in 1978 that Arizona began to consider creation of its own jail standards. Senator Jim Kolbe, chairman of the Judiciary Committee of the Arizona Senate and a member of the State Justice Planning Agency Supervisory Board presented a proposal for the creation of a blue ribbon panel of elected public officials, judges, corrections officials, and private citizens, to study the situation and develop a set of advisory standards for reference by our 14 counties and 75 cities and towns. The Committee conducted three public hearings throughout Arizona, received public participation, and gathered information. The Committee's findings and reports were adopted by the Justice Planning Agency's Supervisory Board in March of this year.

In January, the state prepared a report on the impact of the proposed jail standards which provided detailed information on the possible impact of the proposed standards on local correctional facilities. Although the majority of the standards were found to have minimal financial impact, standards relating to overcrowding and inadequate personnel will require an estimated \$110 million to bring county and local facilities into compliance. Of that total, some counties will have to renovate existing facilities, while others will need additional space or entirely new facilities.

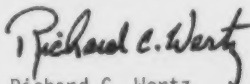
The Honorable Charles Mathias
May 28, 1981
Page Two

Prospects for funding of jail standard compliance within Arizona are not encouraging. By referendum, the state has adopted both stringent spending and taxing limitations which allow for growth of no more than 7% a year. Combined with inflation and the rising cost of health and other social service programs, the counties are faced with a heavy burden excluding the cost of jail standard compliance. If the counties cannot comply, they are faced with the equally onerous possibility of standards imposed by the federal judiciary in an adversary process which may vary by county and municipality.

By the recommendations of its Jail Standards Committee, and the adoption of such standards by the State Justice Planning Agency, Arizona has demonstrated the will to provide safer, more secure, and more professional operation of its county and local jails. The legislation sponsored by Senator Dole is essential if we are to maintain the momentum to fully realize our goals. I hope Arizona's experience will be helpful to your Committee in its consideration of jail construction legislation.

I would, however, like to make a recommendation in regards to the scope of jail construction legislation. In our work with the Office of Juvenile Justice and Delinquency Prevention and the Bureau of Indian Affairs, we have discovered that conditions in jails used to house adults and juveniles on Indian reservations in Arizona are similar to substandard jails in the most remote cities and towns. I believe that jail construction legislation would be strengthened if jails on Indian reservations were included. I would be happy to meet with you and your Committee on this issue and jail construction legislation in general at your convenience.

Sincerely,



Richard C. Wertz
Executive Director

RCW:pj

cc: National Criminal
Justice Association

OFFICE OF THE MAYOR

Edward H. McNamara
MAYOR



TELEPHONE
421-2000

33000 CIVIC CENTER DRIVE
LIVONIA, MICHIGAN 48154

November 2, 1981

Senator Charles Mathias, Jr.
Subcommittee of Criminal Law
Russell Building, Room 162
Washington, D.C. 20510

Dear Senator Mathias:

The City of Livonia Police Department covers an area of 36 square miles and 105,000 population. Our lockup facility services adjoining cities for a total population of 250,000 and the State Police.

We have continually, over the past ten years, become involved in disputes with the State Corrections and Federal Courts. We have been ordered by Wayne County Circuit Court to hold prisoners (because County Jail is full) and then ordered by Federal Court to pay for prisoners kept for 30 to 60 days for failure to operate a fully staffed jail.

At the same time, Circuit Judges and District Judges are advised daily as to room for inmates and to sentence accordingly.

This I feel is not justice, but selective jailing according to accommodations.

This area requires a regional jail for short term offenders and weekend prisoners, who need correctional assistance.

Your cooperation in a serious problem of law enforcement is requested.

Sincerely,

Edward H. McNamara
Edward H. McNamara, Mayor
CITY OF LIVONIA

EHMCN:g

cc: City Clerk
City Attorney
Finance Director
Chief of Police
City Council



November 24, 1981

The Honorable Charles McC. Mathias, Jr.
 United States Senator
 Chairman of Criminal Justice
 Subcommittee
 162 Russell Building
 Washington, D.C. 20510

Attention: Charley Borden

Dear Senator Mathias:

I appreciate the opportunity to express my opinion to this Subcommittee and sincerely regret the fact that prior commitments prevent me from appearing before the committee at this time.

It is my belief you are deliberating on legislation that will have a major impact upon the future of state correctional systems. Senate Bill number 1597, "To establish a corporation for Prison Industries", has the potential of changing the direction of correctional planning and providing additional relief to the taxpayer. Allowing state prison industries to produce goods that can be marketed and shipped in interstate commerce gives corrections professionals the opportunity to explore linkages with the private sector that were impossible in the past. The nature of the business community and the mobility of our society dictates that the majority of products sold in our country, at some point, are involved in interstate commerce. An example is the manufacture and assembly of electronics. While components may be manufactured in one state or country, the assembly of those components often take place in a different state or country.

The Arizona Department of Corrections is committed to protecting the public by operating safe, secure institutions and to rehabilitating inmates. The habilitation would be enhanced by providing an opportunity for inmates to learn vocational skills that are in demand in the private sector and by having inmates employed in a private sector environment. The inmate would begin to develop self-respect. Feelings of being a burden on society could be reduced. Employment for the inmates would mean they could become contributing members of society by: having them defray the cost of room and board while incarcerated; providing family support thereby reducing or eliminating tax supported welfare costs; making payments of restitution to victims; and by paying taxes.

AN AFFIRMATIVE ACTION / EQUAL OPPORTUNITY EMPLOYER

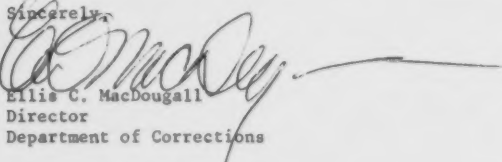
Senator Mathias
November 24, 1981
Page Two

It is not my intent to contract with industry where a surplus of civilian workers exist or to allow the exploitation of prison labor. In establishing an industry in our prison industries, I am committed to the payment of prevailing wages for that specific trade.

It is my opinion that the key sections of Senate Bill number 1597 are those which would allow exemptions to restrictions on prisoner-produced goods being sold in interstate commerce and contracting between the Federal government and State prison industries. The sections relating to loans and grants would facilitate activities of State prison industries, but I do not believe these sections to be as critical in allowing prison industry systems to become self-supporting operating units.

For these reasons, I strongly urge passage of Senate Bill number 1597. If there are future hearings on this bill, I will make a concerted effort to be available. If I can provide any additional information to this committee in support of this bill, please do not hesitate to call upon me.

Sincerely,



Ellis C. MacDougall
Director
Department of Corrections

ECM:as



AMERICAN CORRECTIONAL ASSOCIATION

4321 Hartwick Road, Suite L-208 • College Park, Maryland 20740 • 301-699-7600

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December 11, 1981

The Honorable Charles McC. Mathias, Jr.
Chairman, Subcommittee on Criminal Law
Committee on the Judiciary
United States Senate
Washington, D. C. 20510

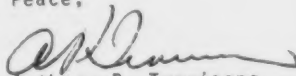
Dear Senator Mathias:

The American Correctional Association (ACA) is pleased to be placed on Committee record in favor of S. 1597, a Bill to Establish a Corporation for Prison Industries.

S. 1597 is similar to amendment no. 482 to S. 951 offered by Senator Dole. The American Correctional Association supports the enhancement of prison industry programs with correctional institutions.

The American Correctional Association commented on S. 1690 in our letter under date of October 26, 1981, sent to your Subcommittee on Juvenile Justice. A copy of said letter is enclosed for inclusion in the hearing record.

Peace,


Anthony P. Travisono
Executive Director

STATE OF NEW YORK
DEPARTMENT OF CORRECTIONAL SERVICES
ALBANY, N. Y. 12226

THOMAS A. COUGHLIN, III
COMMISSIONER

January 12, 1982

Hon. Charles McC. Mathias, Jr.
United States Senate
Committee on the Judiciary
Washington, D.C. 20510

Dear Senator Mathias:

Thank you for providing me with copies of S. 1597 by Senator Dole and S. 1690 by Senator Specter.

I have reviewed both of these proposals and have had them reviewed by my staff.

I am somewhat troubled by S. 1690. I am troubled by the provision in Section 1A which prohibits a parole authority from releasing a prisoner unless the State has met its obligation to provide prisoners with a marketable job skill and basic literacy.

It is unclear from the text, and indeed unclear in common usage, what is meant by a marketable job skill and basic literacy. Moreover, I believe that even under the best of circumstances the ability of any prison system to provide all prisoners with a marketable job skill and basic literacy is constrained by the reality of prison life and the motivation and ability of the individual inmate. To prohibit the release of those inmates prior to the expiration of their sentence would artificially increase prison population, a situation which we can ill afford at this time.

Additionally, as S. 1690 would impose a severe responsibility upon the states without providing any of the resources to get the job done. Although the establishment of a State prison vocational skills advisory council is commendable, it is not clear what the council would do or in what way there would be any assistance forthcoming from the Federal government to meet the requirements of this act. In sum, the act is primarily negative in its impact and would impose an undue burden upon State prison systems.

Senate bill 1597 proposed by Mr. Dole on the other hand is more thoughtful in its approach to the problem. We would support the establishment of a corporation for prison industry as a meaningful first step towards addressing the problems faced by prison industries on a national basis. I believe however that the \$750,000 proposed appropriation is insufficient to the need and limits the ability of the

Hon. Charles McC. Mathias, Jr.
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corporation to substantially improve the condition of prison industry throughout the country.

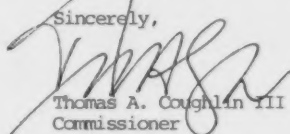
I believe consideration might properly be given to vesting the corporation with the authority to purchase prison made goods from the states for sale to other state and local governments throughout the country. This "middleman" function might provide an impetus to the states to back away from existing state use laws. Additionally, you may wish to consider authorizing purchases and sales by the corporation to be exempt from existing Federal regulations governing the interstate shipment of prison made goods.

Vesting this type of authority in the commission would enable cooperative ventures among the states and would substantially enhance the marketability of prison made goods resulting in the employment of larger number of inmates and the enhanced profitability of prison industries to the states. Likewise, the corporation could enter into an arrangements where it would purchase sub-assemblies from different states and contract with yet another state for the total assembly process.

I appreciate your continuing interest in the prison industries matter and would be more than happy to discuss my views on this subject with yourself or the Committee at any time.

I trust this information has been responsive to your concerns.

Sincerely,



Thomas A. Coughlin III
Commissioner

cc: Mr. Horn
Mr. Rodriguez
Mr. Gould



AMERICAN CORRECTIONAL ASSOCIATION

4321 Hartwood Road, Suite L-200 • College Park, Maryland 20740 • 301-699-7600

October 26, 1981

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Mr. Bruce A. Cohen
Chief Counsel
Subcommittee on Juvenile Justice
Committee on the Judiciary
United States Senate
Washington, D. C. 20510

Dear Bruce:

Thank you for your letter of October 16, 1981. The attachments to our letter response to the Attorney General's Task Force on Violent Crime are herewith enclosed.

We have completed a review of S. 1688, 1689, and 1690.

We support consideration of S. 1689 in its present form provided:

1. That it be prospective from the date of enactment.
2. That it apply only to those persons convicted by states and sentenced to life imprisonment under state habitual criminal statutes.

S. 1688 we support without reservation in the case of career criminals, and assuming that this class of offender could be institutionalized in accordance with the provisions of S. 1689, if passed.

S. 1690, the purposes for which this legislation is advocated are commendable. However, we believe that these important objectives could more realistically be achieved if the recommendations of the National Advisory Council on Vocational Education and the Department of Education (Corrections Section) were adopted as proposed and the present vocational education law amended accordingly. We have requested the Department of Education to forward a complete set of these proposals to you directly and commend them to you for your consideration.

When a firm agenda for Subcommittee hearings is developed, we would welcome the opportunity to submit our position to you for the record either in writing or, at the pleasure of the Committee, in oral testimony.

Peace,

Anthony P. Trivisono
Executive Director